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# INTERNATIONAL REVIEW OF THE RED CROSS



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*IN THE INTERNATIONAL REVIEW OF THE RED CROSS*

The *International Review of the Red Cross* invites readers to submit articles relating to the various humanitarian concerns of the International Red Cross and Red Crescent Movement. These will be considered for publication on the basis of merit and relevance to the topics to be covered during the year.

- Manuscripts will be accepted in *English, French, Spanish, Arabic or German*.

**Texts should be typed, double-spaced, and no longer than 20 pages (or 4 000 words). Please send diskettes if possible (*Wordperfect 5.1 preferred*).**

- Footnotes (*no more than 30*) should be numbered superscript in the main text. They should be typed, double-spaced, and grouped at the end of the article.
- Bibliographical references should include at least the following details:  
(a) for books, the author's initials and surname (in that order), book title (underlined), place of publications, publishers and year of publication (in that order), and page number(s) referred to (p. or pp.); (b) for articles, the author's initials and surname, article title in inverted commas, title of periodical (underlined), place of publication, periodical date, volume and issue number, and page number(s) referred to (p. or pp.). The titles of articles, books and periodicals should be given in the original language of publication.
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## **FOLLOW-UP TO THE INTERNATIONAL CONFERENCE FOR THE PROTECTION OF WAR VICTIMS**

*(Geneva, 30 August - 1 September 1993)*

## **Meeting of the Intergovernmental Group of Experts for the Protection of War Victims**

*(Geneva, 23 - 27 January 1995)*

In its Final Declaration, the International Conference for the Protection of War Victims (Geneva, 30 August - 1 September 1993) undertook to give practical effect to its refusal to accept grave violations of international humanitarian law in the following terms:

*"With this Declaration in mind, we reaffirm the necessity to make the implementation of international humanitarian law more effective. In this spirit, we call upon the Swiss Government to convene an open-ended intergovernmental group of experts to study practical means of promoting full respect for and compliance with that law, and to prepare a report for submission to the States and to the next session of the International Conference of the Red Cross and Red Crescent".<sup>1</sup>*

In accordance with the Conference's decision, the Swiss Federal Council organized a meeting in Geneva from 23 to 27 January 1995, to which it invited representatives of the States party to the Geneva Conventions, and, as observers, a number of governmental and non-govern-

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<sup>1</sup> Final Declaration of the International Conference for the Protection of War Victims, *International Review of the Red Cross (IRRC)*, No. 296, September-October 1993, pp. 401-405.

mental organizations concerned with humanitarian matters. Switzerland thus invited the same group of participants as for the 1993 Conference. Unlike that conference, however, the meeting took place at the technical level, with a view to devising practical means of promoting respect for humanitarian obligations in times of armed conflict.

The experts, representing 107 States and 28 governmental and non-governmental organizations, met for five days in Geneva. Ambassador A. Luzius Caflisch, legal adviser to the Department of Foreign Affairs (Switzerland), acted as Chairman and Ambassador Sedfrey A. Ordoñez (Philippines) as Vice-Chairman. The Working Party was chaired by Ambassador Philippe Kirsch (Canada), assisted by Ambassador Jorge Berguno (Chile) as Vice-Chairman.

The experts concentrated on the points which a preparatory meeting, held in Geneva from 26 to 28 September 1994, had recommended for further study. These recommendations were published in the International Review of the Red Cross.<sup>2</sup>

The experts were also provided with a working document prepared by Switzerland on the basis of the preparatory meeting's recommendations and in consultation with the States.<sup>3</sup> The ICRC submitted its own suggestions concerning the nine recommendations.<sup>4</sup>

After five days of intensive discussions and negotiations, the experts adopted by consensus a set of "Recommendations" which, in accordance with its mandate, the group will be submitting to the 26th International Conference of the Red Cross and Red Crescent.<sup>5</sup> In chapters I to VII, the text identifies many possible ways of ensuring that humanitarian law is better accepted, understood and respected, ranging from educating the population as a whole to punishing violations. The ICRC is encouraged to provide support services in that respect, while attention is drawn to the role played by the National Societies in their own countries. Several delegations were disappointed that the group had not gone a stage further, for instance by recommending the institution of a system of mandatory reports concerning the implementation of international humanitarian law, a proposal which in the end the meeting failed to adopt. In the VIIIth

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<sup>2</sup> *IRRC*, No. 302, September-October 1994, pp. 448-449.

<sup>3</sup> See below, pp. 7-18.

<sup>4</sup> See below, pp. 19-32.

<sup>5</sup> See below, pp. 33-38.

recommendation, on the other hand, the ICRC is asked to address some particularly difficult problems.

It may be remembered that in its Final Declaration the International Conference for the Protection of War Victims called on Switzerland to prepare a report for submission to the States and to the next session of the International Conference of the Red Cross and Red Crescent. The Intergovernmental Group of Experts' recommendations undoubtedly provide a sound basis for the discussions of the 26th International Conference. It is now up to the delegates of the States and the representatives of the Movement meeting at that Conference in Geneva in December 1995 to take the necessary decisions, while bearing in mind the original goal, namely improved protection for war victims.

*The Review*

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**Meeting of the Intergovernmental  
Group of Experts  
for the Protection of War Victims**

*Geneva, 23-27 January 1995*

WORKING PAPER DRAWN UP BY THE SWISS GOVERNMENT  
ON THE BASIS OF THE NINE RECOMMENDATIONS  
MADE BY THE PREPARATORY MEETING  
HELD IN GENEVA  
*(26-28 September 1994)*

**Introductory remarks**

*In its final declaration, the International Conference for the Protection of War Victims (30 August to 1 September 1993) called upon the Swiss government to convene an open-ended intergovernmental group of experts to study practical means of promoting full respect for and compliance with international humanitarian law (IHL), and to prepare a report for submission to the States and to the next session of the International Conference of the Red Cross and Red Crescent.*

*Having accepted that mandate, the Swiss Federal Council has scheduled the meeting of experts (the "Experts") for 23 to 27 January 1995.*

*After requesting all States that had been invited to the War Victims Conference to provide contributions on issues which, in their opinion, should be dealt with by the Experts as a matter of priority, the Swiss government convened a preparatory meeting ("Preparatory Meeting") of 60 States in order to prepare a working document for the Experts. The meeting took place from 26 to 28 September 1994.*

*The Preparatory Meeting submitted nine recommendations to the Experts, defining, in general terms, possible measures to promote com-*

pliance with IHL and proposing that the Experts explore ways in which those broad measures might be translated into specific and practical means (according to one recommendation the ICRC would be called upon to analyse certain additional measures which could i.a. ensure universal respect for IHL). Those recommendations were sent in November 1994 to all States and other entities invited to the meeting of Experts.

In an effort to facilitate the Experts' work, the Swiss authorities, which are organizing the meeting, have drawn up i.a., and on the basis of contributions from governments, the present working paper which contains a number of suggestions on how the measures to promote compliance with IHL set forth in the above recommendations may be translated into more concrete means. It is understood, however, that this paper does not restrict the Experts' freedom to devise practical means as they themselves see fit.

## I. Ways and means to facilitate accession to IHL instruments

### 1. Introduction<sup>1</sup>

Universal applicability of IHL instruments is a precondition for proper implementation of their provisions. Indeed, the fact that belligerents may not all be bound by the same IHL instruments may lead to confusion and a degradation of humanitarian standards.

### 2. Recommendation

The Preparatory Meeting recommends that the Experts

*"Explore ways and means of facilitating States' accession to IHL instruments, notably the 1949 Geneva Conventions and their Additional Protocols, the 1980 Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons and its three Protocols, and the 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict, taking into consideration the services*

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<sup>1</sup> See Final Declaration of the International Conference for the Protection of War Victims (hereinafter the "Final Declaration"), points II.4 and 6, *International Review of the Red Cross (IRRC)*, No. 296, September-October 1993, p. 379.

*that, in particular, the ICRC, the National Red Cross and Red Crescent Societies and their Federation and the National Committees referred to below may be able to provide in that regard;*

*Consider, in this context, ways and means of facilitating States' recognition of the competence of the International Humanitarian Fact-Finding Commission according to Article 90 of Additional Protocol I".*

### **3. Practical means**

The Experts may consider recommending that

- the States party to IHL instruments promote accession thereto in their bilateral and multilateral contacts with non-contracting States;
- the depositaries of IHL instruments appeal to each non-contracting State to accede to the respective instruments, and publish periodically, e.g. in the *International Review of the Red Cross*, the state of accessions;
- the UN and other intergovernmental and regional organizations regularly include appeals to accede to specific IHL instruments in their agendas;
- the States that have recognized the competence of the International Humanitarian Fact-Finding Commission promote recognition thereof in their bilateral dealings, particularly with High Contracting Parties to Additional Protocol I that have not made the declaration under its Article 90, and make voluntary contributions as provided for in paragraph 7 of said provision, in order to facilitate promoting the recognition of the Commission's competence;
- national committees referred to under heading V below support their governments in the process of acceding to pertinent IHL instruments.

## **II. Ways and means of clarifying the role of customary rules of IHL**

### **1. Introduction<sup>2</sup>**

The vast majority of today's armed conflicts are non-international. With regard to those conflicts in particular, there is a widely-held view that the applicable rules and the state of accessions to the few existing international instruments in the relevant area of international law are

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<sup>2</sup> See Final Declaration, point I.4, *IRRC, op. cit.*, p. 378.

inadequate. In addition, there appears to be a considerable measure of uncertainty as to the scope and the role of customary rules governing both non-international and international armed conflicts.

## 2. Recommendation

The Preparatory Meeting recommends that the Experts

*"Examine ways and means of clarifying the role of customary rules of IHL in the areas of international and non-international armed conflicts".*

## 3. Practical means

The Experts may consider recommending that

- States contribute to the clarification of customary rules of IHL by drawing up, for their armed forces, IHL manuals governing without distinction non-international and international armed conflicts;
- international bodies having the requisite expertise in IHL, such as the ICRC and scientific and academic institutions, e.g. the "Institut für Friedenssicherungsrecht und humanitäres Völkerrecht der Ruhr-Universität Bochum" or the "International Institute of Humanitarian Law" in San Remo, prepare a study clarifying the role of customary rules of IHL in the areas of international and non-international armed conflicts and submit the study to all States, with the assistance of the depositary of the 1949 Geneva Conventions and their Additional Protocols (the "Depositary"), and to the 26th International Conference of the Red Cross and Red Crescent;
- States support efforts to obtain an internationally recognized status for the "Declaration of Minimum Humanitarian Standards" adopted by a group of experts in Turku in December 1990.

## III. Ways and means of providing advisory services to States in their efforts to implement IHL and disseminate its rules and principles

### 1. Introduction<sup>3</sup>

To be effective, IHL must be implemented at the national level, and its rules and principles must be disseminated within the armed forces as

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<sup>3</sup> See Final Declaration, points II.1, 2 and 5, *IRRC, op. cit.*, pp. 378-379.

well as the population at large. Many States party to IHL instruments find it difficult, however, to take implementation measures and to disseminate IHL in practice, whether for lack of trained personnel or for linguistic, financial or other reasons.

## 2. Recommendation

The Preparatory Meeting recommends that the Experts

*"Study ways and means whereby bodies dealing with IHL, such as the ICRC, the National Red Cross and Red Crescent Societies and their Federation, may, possibly with the assistance of academic institutions, provide advisory services to States in their efforts to implement IHL and disseminate its rules and principles".*

## 3. Practical means

The Experts may consider recommending that

- the ICRC, with the assistance of the National Red Cross and Red Crescent Societies and their Federation, and of scientific, academic and other institutions, strengthen the advisory services it provides to States in their efforts to implement and disseminate IHL, on the basis, i.a., of reports by the International Conference of the Red Cross and Red Crescent, pursuant to heading VI below;
- the States indicate to the ICRC the specific needs they may have for such advisory services;<sup>4</sup>
- the ICRC submit periodic reports on its advisory services to the International Conference of the Red Cross and Red Crescent.

# IV. Ways and means of improving dissemination of IHL

## 1. Introduction<sup>4</sup>

Proper application of IHL presupposes that those who are expected to apply it are thoroughly familiar with its principles and rules. Yet, as with increasing frequency in today's armed conflicts people who take up arms do not belong to regular armed forces, it is of utmost importance

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<sup>4</sup> See Final Declaration, points II.1 and 2, *IRRC, op. cit.*, pp. 378-379.

that dissemination of IHL reach not only national armed forces, but the population as a whole. Teaching programmes for these two target groups in fact already appear to exist in a number of States. Much could be gained from international cooperation in this field.

## 2. Recommendation

The Preparatory Meeting recommends that the Experts

*"Examine ways and means of improving dissemination of IHL, putting particular emphasis on the education of students of all ages and increasing media awareness, as well as on the training of armed forces, and the preparation of handbooks on the law of armed conflicts in an effort to harmonize, to the extent possible, the manner in which IHL is disseminated and implemented in different States".*

## 3. Practical means

The Experts may consider recommending that

- the ICRC and the UN, including its organs and specialized agencies, such as UNESCO, coordinate their efforts to disseminate IHL;
- the States increase their efforts to educate and train the members of their armed forces and security forces, according to their specific ranks and functions, in the law of armed conflicts;
- the States draw up IHL handbooks which must be used by their armed forces as an integral part of military training;
- the ICRC prepare, in cooperation with experts from different regions of the world, a model handbook on IHL for armed forces and submit a draft thereof to the International Conference of the Red Cross and Red Crescent;
- the States increase their efforts to educate, where appropriate with the assistance of National Red Cross and Red Crescent Societies, the civilian population in the law of armed conflicts;
- academic and other institutions involved in educating the public devise specific programmes and teaching materials designed to imbue students of all ages with the principles of IHL and make those programmes available to interested States;
- governments, international organizations and other bodies dealing with IHL organize seminars with representatives of the national and international media in order to increase their awareness of IHL.

## V. Ways and means whereby the creation of national committees may foster implementation and dissemination of IHL

### 1. Introduction<sup>5</sup>

Coordination of measures to implement and disseminate IHL is crucial not only at the international level but at the national level as well. While it appears that in many countries different government authorities are dealing with different aspects of IHL and are largely unaware of each other's endeavours, some governments have created committees of varied composition in order to coordinate national measures in the area of IHL.

### 2. Recommendation

The Preparatory Meeting recommends that the Experts

*“Explore ways and means whereby governments may benefit from the creation of national committees to advise on and assist in national implementation and dissemination measures”.*

### 3. Practical means

The Experts may consider recommending that

- States that have created national committees to advise governments on national implementation and dissemination measures share the benefit of their experience with States interested in the establishment of such committees;
- national committees already in existence cooperate with the body providing advisory services (see point III.3 above) to governments in their efforts to implement and disseminate IHL;
- an international body, such as the ICRC or a scientific or academic institution, organize a meeting of governmental experts from States having already instituted national committees and make a report of the meeting's conclusions available to other States interested in the creation of such committees.

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<sup>5</sup> See Final Declaration, point II.5, *IRRC, op. cit.*, p. 379.

## VI. Ways and means whereby States could report to an international body dealing with IHL on their efforts to implement and disseminate IHL

### 1. Introduction<sup>6</sup>

An exchange of information among States on national measures of implementation and dissemination is desirable, as it allows States with less experience in this area, or more modest resources, to benefit from the experience and accomplishments of other States; moreover, certain aspects of such an exchange constitute a legal obligation under the 1949 Geneva Conventions, Additional Protocol I and the 1954 Hague Convention.

Yet, for various reasons this system of reporting on national measures has never worked satisfactorily.

### 2. Recommendation

The Preparatory Meeting recommends that the Experts

*"Examine ways and means whereby States could report to an international body dealing with IHL, such as the ICRC or the International Conference of the Red Cross and Red Crescent, on their efforts to implement IHL and to disseminate its rules and principles".*

### 3. Practical means

The Experts may consider recommending that a system be established whereby

- States, where appropriate with the assistance of national committees and National Red Cross and Red Crescent Societies, report every four years to a commission of governmental experts, to be established pursuant to rules to be adopted at the 26th International Conference of the Red Cross and Red Crescent, on national measures taken to implement and disseminate IHL, including
  - national measures for the repression of violations of IHL;
  - the establishment of an internal system to monitor observance of IHL by the armed forces;
  - measures to train the armed forces in the application of IHL rules;

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<sup>6</sup> See Final Declaration, point II.5, *ibid.*

- measures to educate the general population, particularly students of all ages, in the principles and rules of IHL;
- legislation on the protection of the Red Cross and Red Crescent emblem;
- the ICRC provides the necessary administrative services to the commission referred to above;
- said commission prepares a summary report on the States' reports for submission to the International Conference of the Red Cross and Red Crescent or to a special conference convened by the Depositary, and makes any recommendation it may deem appropriate.

## VII. Ways and means whereby the international community could react to violations of IHL and international cooperation could be improved in order to ensure respect for IHL

### 1. Introduction<sup>7</sup>

IHL reflects universally accepted human values. Violations of its principles and rules must therefore be a subject of grave concern to the international community as a whole, and they warrant joint reactions.

### 2. Recommendation

The Preparatory Meeting recommends that the Experts

*"Examine ways and means whereby the international community could react in the face of violations of IHL, as well as the possibilities of improving cooperation between States and the United Nations or other international fora and bodies in order to ensure respect for IHL".*

### 3. Practical means

The Experts may consider recommending that the States

- exert, in compliance with international law, whatever influence they may have, including through diplomatic and economic means, in order to ensure respect for IHL by the parties to an armed conflict;

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<sup>7</sup> See Final Declaration, point II.11, *IRRC*, *op. cit.*, p. 380.

- cooperate within universal and regional frameworks
  - to exert, where appropriate, political, economic or any other pressure on persistent violators of IHL, and
  - to establish and enforce demilitarized zones for the protection of civilian populations;
- establish arms export and control policies that distinguish States that comply with IHL from those that do not;
- strengthen their commitment to prosecute or extradite war criminals apprehended in their jurisdictions;
- support efforts to establish, on a global and a regional level, criminal jurisdictions for the prosecution of violators of IHL and implement all national measures necessary to ensure their proper functioning;
- cooperate with universal and regional intergovernmental organizations and with the International Humanitarian Fact-Finding Commission in their efforts to enquire into violations of IHL, by providing them, whenever requested, with funds, experts and logistical support.

## **VIII. Ways and means of dealing with specific violations of IHL and discussing general problems regarding the application of IHL**

### **1. Introduction<sup>8</sup>**

While enforcement of IHL and repression of its violations are primarily the responsibility of the civilian and military authorities of the parties to an armed conflict, the conviction that particularly serious violations of IHL ought to be the concern of the international community at large, has of late gained considerable ground. This new attitude is reflected by the establishment of international tribunals for war crimes committed in the former Yugoslavia and Rwanda, the progress which the creation of an international criminal court has made in recent years, and the fact that more States have recognized the competence of the International Humanitarian Fact-Finding Commission in the last four years than in the previous thirteen.

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<sup>8</sup> See Final Declaration, point II.11, *ibid.*

What may still be lacking, however, is an international forum dealing with specific violations of IHL on an intergovernmental level.

In addition, there may be a need for a forum to discuss measures of improving observance of IHL in general.

## 2. Recommendation

The Preparatory Meeting recommends that the Experts

*"Explore practical ways and means of dealing with specific violations of IHL and discussing general problems of the application of IHL, e.g., by strengthening the role of the International Conference of the Red Cross and Red Crescent and by making better use of the forum provided for in Article 7 of Protocol I additional to the 1949 Geneva Conventions".*

## 3. Practical means

The Experts may consider recommending that

- States assist international and national fora dealing with specific violations of IHL by providing information received, *i.a.*, from refugees who have been the victims of or have witnessed serious violations of IHL;
- the Depositary or the International Conference of the Red Cross and Red Crescent organize, in the period immediately preceding or following, or periodically between Conferences, a meeting of government representatives and interested intergovernmental and non-governmental organizations, in order to discuss specific violations of IHL on the basis of information provided by States, intergovernmental or non-governmental organizations; and that the meeting draw up a report to be submitted to the Conference and propose recommendations that the Conference may wish to communicate to the States concerned;
- the States step up their discussions of specific violations of IHL within the framework of the UN Commission on Human Rights and continue to convene, in situations where grave violations of human rights and IHL instruments have occurred, extraordinary sessions of said Commission in order to deal with those violations;
- the Depositary organize periodic meetings — of the kind provided for in Article 7 of Additional Protocol I — of the States party to the 1949 Geneva Conventions to discuss general problems regarding the application of IHL.

## IX. Analysis by the ICRC of measures ensuring universal respect for IHL, the protection of women and children and the rights of refugees, and of situations where States' structures have disintegrated

### 1. Introduction<sup>9</sup>

The debate at the Preparatory Meeting showed that there are important issues, relating to armed conflicts and the protection of their victims, that are too complex to be considered by the Experts within the short time at their disposal, and that thorough discussion thereof should take place at a later date, on the basis of preparatory studies conducted by the ICRC.

### 2. Recommendation

The Preparatory Meeting recommends that the Experts call upon the ICRC to

- “(a) analyse measures which could ensure, i.a,*
  - universal respect for IHL, particularly as it relates to civilians who are more and more often the victims of the use of means and methods of war consisting of systematic and large-scale killings by any armed groups, as well as of other violations of IHL in any armed conflict,*
  - full protection for women and for children from violations of IHL,*
  - full protection of the rights of refugees from violations of IHL, including the 1951 Convention relating to the status of refugees;*
- (b) examine situations where States' structures have disintegrated as a result of non-international armed conflicts”.*

### 3. Practical means

The Experts may consider calling upon the ICRC to analyse the measures and examine the situations referred to under paragraph 2 above.

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<sup>9</sup> See Final Declaration, points I.1 and 3, and point II.3, *IRRC*, *op. cit.*, pp. 377, 379.

Meeting of the  
Intergovernmental Group of Experts  
for the Protection of  
War Victims

(Geneva, 23-27 January 1995)

**PROPOSALS**

BY THE

**INTERNATIONAL COMMITTEE  
OF THE RED CROSS**

Special Rapporteur at the International Conference  
for the Protection of War Victims

(Geneva, 1993)

*Geneva, 28 December 1994*

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## Preamble

The ICRC was closely involved in the International Conference for the Protection of War Victims (Geneva, 1993) and in the follow-up efforts, which reflect concerns that lie at the heart of the institution's mandate and its humanitarian work in armed conflicts.

On the basis of its experience, the ICRC drew up a Report on the Protection of War Victims, which formed the basis of the 1993 Conference and was followed by a document entitled "Protection of War Victims — Suggestions of the International Committee of the Red Cross" (April 1994), in which the ICRC raised the principal issues that it felt should receive further consideration.

So as to contribute as effectively as possible to the work of the intergovernmental group of experts in January 1995, the ICRC also consulted the other components of the International Red Cross and Red Crescent Movement during a meeting with experts from the National Societies and their International Federation on 12 and 13 September 1994. It then also sent them a document drawn up following the preparatory meeting of intergovernmental experts, held from 26 to 28 September 1994, for consultation.

Despite the pledges made by the States at the 1993 International Conference, the plight of conflict victims, far from improving, has in fact worsened. It is therefore high time that decisions were made and action taken to break this tragic and intolerable deadlock. The ICRC, with the support of the National Societies and their International Federation, will do its utmost to contribute to this effort.

As regards the specific issues recommended for consideration by the experts, the ICRC wishes to make proposals on four main topics, on which it hopes that substantial progress will be made:

- the universal recognition and acceptance of international humanitarian law (IHL);
- the systematic adoption and strengthening of national measures for the implementation of IHL;
- the dissemination of IHL and its rules among the general population and more particularly among the armed forces and other persons bearing arms;
- the reaction of the international community to breaches of IHL and the repression of violations.

The ICRC stands ready, moreover, to carry out any additional studies which the experts might entrust to it on the basis of the recommendations made by the preparatory meeting.

## 1. Universal recognition and acceptance of international humanitarian law

*Refs.: 1st, 2nd and 3rd recommendations*

Universal recognition of IHL is essential if its provisions are to be properly implemented. The fact that belligerents are not all bound by the same Conventions may give rise to confusion and therefore weakens the authority of the humanitarian rules.

Compliance with the provisions restricting methods and means of combat, in particular, will be all the more difficult to secure if they are not universally accepted. States will notably hesitate to renounce a weapon proscribed by a treaty if their potential enemies possess the same weapon and are not bound by the treaty in question.

There are three possible ways of achieving this general goal, and all three should be given close consideration.

### 1.1 Universal acceptance of all the humanitarian treaties

This first requirement is also the most obvious. Obstacles to ratification of or accession to the humanitarian treaties may be of an administrative, military or political nature.

#### *ICRC proposals*

- To remove administrative obstacles, it should be recommended that accession to IHL instruments be examined as a matter of priority, considering their direct impact on the plight of war victims.
- To remove military obstacles, it should be recommended that the military authorities in States bound by the humanitarian instruments examine, together with their counterparts in countries that

have not become party to them, the practical implications of treaty obligations as regards the conduct of military operations.

- To remove political obstacles, the universal impact of decisions concerning IHL treaties should be underscored, and hence the responsibility of governments in this respect towards all victims of war.

The ICRC, for its part, will relentlessly pursue its efforts to explain the humanitarian treaties and urge States to become party to them, and to this end intends to rely more extensively on the National Societies, which have already played a major role in this regard in several countries.

The role of the United Nations General Assembly and the regional organizations not only in adopting resolutions urging States to become party to these treaties but also in seeing that these resolutions are followed up should also be examined in depth.

### *ICRC proposals*

- Extend to cover all the main IHL treaties the debate regularly devoted by the UN General Assembly to the 1977 Additional Protocols.
- Systematically place such a review on the agenda of meetings of regional organizations.

## 1.2 Adaptation of international humanitarian law

The revision of IHL is an extremely long and arduous process. There is a period of at least ten years between drafting the initial version of any convention and its adoption by a Diplomatic Conference, and it takes twenty years at least from the time of adoption to achieve practically universal acceptance of the treaty. The figures may vary but they do indicate the scale of the problem. This thirty-year time lapse naturally gives rise to concern when one realizes that the universality of IHL is a *sine qua non* for its effective application and that the techniques of warfare and the circumstances in which war is waged undergo constant change. It is therefore necessary to resist the temptation of relaunching a large-scale revision of the law when universal acceptance of the existing treaties has not yet been achieved — the more so since the fundamental rules of IHL remain perfectly valid.

But examination of this issue must be taken one step further. It is neither necessary nor timely to envisage an overall revision of IHL, but it would be desirable to adapt or clarify some of its provisions. There are for example the provisions affording special protection to women and children; the rules governing the monitoring of relief supplies (linked to the problem of famine in war and the question of embargoes); and the provisions aimed at safeguarding the health of the civilian population in times of war.

The rules pertaining to prohibitions or restrictions on the use of certain weapons should likewise achieve universal adoption in the very near future.

Finally, the dire effects on civilians of the large-scale circulation of weapons deserve close consideration.

Appropriate means of rapidly adapting the law must therefore be found.

### ***ICRC proposals***

- **Make optimum use of International Conferences of the Red Cross and Red Crescent to clarify IHL and highlight problems with regard to its implementation.**
- **Make effective use of the opportunity afforded by Article 7 of 1977 Additional Protocol I to organize meetings in order to examine general problems arising with respect to the application of IHL.**

### **1.3 Consistency of instructions regarding IHL for armed forces worldwide**

Achieving universal recognition of IHL does not concern the diplomatic world alone. Action must also be taken in the field. That is why it is essential to maintain a dialogue with the military regarding the incorporation of the humanitarian rules into the training of armed forces. Dialogue with and among the military should lead to clarification of the practical impact of the rules of humanitarian law on the conduct of military operations. It should in particular demonstrate the fact that directives concerning the conduct of hostilities in non-international armed conflicts are almost always the same as those applicable in international

conflicts. It is certainly desirable that they should be so, because it would be totally unacceptable, to take a striking example, to agree not to use a weapon and then claim the right to use it against one's own population.<sup>1</sup> Finally, dialogue at this level should make it possible to deal more effectively with issues such as the protection of the environment in the light of recent experience.<sup>2</sup>

### *ICRC proposals*

- Organize regular regional meetings, with government support, to examine and develop a consistent set of military IHL instructions.
- Carry out a comparative analysis of existing instructions to single out their main common characteristics and develop teaching materials on that basis.

## **2. Systematic adoption and strengthening of national measures for the implementation of international humanitarian law**

### *Refs.: 3rd, 5th and 6th recommendations*

If IHL is to be effectively implemented in times of armed conflict, firm and systematic measures must be taken in peacetime to put it into effect at the national level.

Does domestic legislation adequately provide for the repression of war crimes and other violations of IHL? Is there a law protecting the Red Cross and Red Crescent emblem? Are the armed forces being given appropriate instructions? Are the principles of IHL being taught at all levels of the

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<sup>1</sup> Such uniformity of humanitarian rules governing the conduct of hostilities in international armed conflicts and internal conflicts would not mean, however, abolishing all differences between the rules of international humanitarian law applicable to these two types of conflict — the most striking example being that the rules governing occupation obviously cannot be applied to internal conflicts.

<sup>2</sup> See *Guidelines for military manuals and instructions on the protection of the environment in times of armed conflict*, Report of the Secretary-General to the UN General Assembly, Doc. A/49/323, Annex.

education system? Do universities have a chair of international humanitarian law? These are but a few of the many questions that States should ask themselves.

Since the adoption in 1977 of the Protocols additional to the Geneva Conventions of 12 August 1949, the ICRC has regularly sent all the States a list of basic measures that they should adopt in peacetime to ensure the implementation of these instruments.

Between 1988 and 1991, the ICRC wrote to all the States asking them what national measures they had adopted or were considering. The National Societies also took part in this survey. In cooperation with them, the ICRC has organized national and regional seminars, conducted missions, published articles in the International Review of the Red Cross and, on request, has provided States with advice on their existing or draft legislation in this regard.

Moreover, the National Societies and ICRC delegates in the field constantly strive to impress upon the authorities concerned, members of the armed forces and civilians the importance of respecting and spreading knowledge of humanitarian standards. They also advise them on such matters.

The fact that relatively few States have so far adopted satisfactory implementation measures and that large-scale violations of IHL are committed in many conflicts today underscores the need for a marked increase in such efforts, and State responsibility in this regard must be emphasized.

To attain this objective, a system should be set up at the international level to help States devise their own national implementation measures. Its creation would enhance national efforts, just as the effectiveness of such an international system would depend on the existence of national mechanisms.

### *ICRC proposals*

- Create a regular reporting system to enhance dialogue with and among States on national measures and to increase the effectiveness of such measures, while avoiding complex administrative procedures.
- Set up an international committee of experts on IHL, representing the world's main legal systems, to examine the reports and advise States on any matters regarding the implementation of IHL.

*Commentary on this proposal*

- The committee should meet at regularly, about once a year.
- It could report to the International Conference of the Red Cross and Red Crescent (which meets in principle once every four years).
- The ICRC is prepared to designate the committee members if the States so request, or they could be appointed by the International Conference of the Red Cross and Red Crescent.
- The committee members could be recruited from among the members of national interministerial committees.
- The ICRC is prepared to handle the committee's administration and provide the necessary follow-up between its meetings.
- Step up and generalize the ICRC's advisory services and develop those provided by National Societies, in order to assist the States and promote the exchange of information.
- Increase coordination between these services and other advisory services, such as those provided by the UN Centre for Human Rights and regional organizations, and academic circles at the national and international levels.
- Create in each country a national interministerial committee responsible for coordinating the adoption of national implementation measures, with the participation as far as possible of a National Society representative.
- Encourage the designation and training of a National Society staff member to assist the country's authorities in this regard and to serve as a contact with the other components of the International Red Cross and Red Crescent Movement.

*General comments*

The financing of these measures should also be given close consideration.

The ICRC believes it is necessary to adopt a comprehensive approach to these measures, which must be viewed as a whole and developed harmoniously.

On the other hand it considers it important to distinguish clearly between measures solely designed to help States fulfil their obligations and those required to repress violations of IHL.

### **3. Dissemination of humanitarian law and its rules among the general population and more particularly among the armed forces and other persons bearing arms**

*Ref.: 4th recommendation*

This matter is in fact closely related to the issues dealt with under the previous heading, as instruction in IHL must be developed primarily at the national level. It does, however, call for particular attention.

It is essential that IHL be taught and disseminated in peacetime, since it will not be respected unless it is known by those who must comply with it and ensure its implementation.

These activities were recognized as crucial and accordingly set forth as an obligation for States in the 1949 Geneva Conventions and their 1977 Additional Protocols. The international community furthermore mandated the ICRC to take part in them, with the support of the National Societies and their International Federation.

If the military are to abide by IHL in wartime, the teaching of the humanitarian rules must be incorporated into military instruction, and the values on which the law is based must be recognized as fundamental within the society to which the military belong. The teaching of these rules and values must therefore form an integral part of the education system.

#### **3.1 Dissemination of the humanitarian rules among the general population**

A systematic effort to improve national education in this regard should be undertaken in each country.

##### ***ICRC proposals***

- Include courses on IHL in national education programmes at all levels, the content and form of these courses being tailored to the audience and to the cultural context.
- Step up and strengthen cooperation between UNESCO and the ICRC in this field.

- Give priority attention to the matter within the context of national measures for the implementation of IHL.
- Increase the support provided by National Societies to their respective governments in this field, making use of their knowledge of the humanitarian rules and of local conditions and circumstances, and step up the training of these Societies, with support from the ICRC and their International Federation.

Providing instruction in IHL is extremely difficult in countries where educational facilities are inadequate or have seriously deteriorated on account of armed conflict, disturbances or simply the lack of resources.

When confronted with a situation of armed conflict the ICRC, working in cooperation with the National Societies, has had to do everything possible even in such circumstances to promote understanding of and respect for humanitarian assistance in order to be able to reach the victims. Major campaigns have been launched, essentially through local structures or well-known local people, to get humanitarian messages across in situations where tension among the population was so great that everyone feared the worst. Ad hoc means, such as the radio, visual images, i.e. all available means of communication, have been tried out, sometimes with a certain degree of success.

It should also be pointed out that even in the above-mentioned situations National Societies can get certain humanitarian messages across while conducting programmes on behalf of the most vulnerable members of a community.

### *ICRC proposals*

- Carry out an in-depth analysis of experimental activities undertaken in particularly difficult circumstances to promote understanding of and compliance with the humanitarian rules, in order to turn the lessons learnt from them to maximum account in the future.
- Step up efforts to promote the development of National Societies, to be coordinated by the International Federation, and use National Society activities on behalf of the most vulnerable categories of the population to convey messages of humanity and tolerance.

## 3.2 Instruction to the armed forces

### 3.2.1 Instruction to the regular armed forces

For instruction to regular armed forces, the ICRC recently set up a new division for dissemination to the military and a pool of army officers from various countries who specialize in teaching IHL. The latter will conduct courses and seminars all over the world. These instructors also take part in the courses for senior officers that have been organized for many years by the International Institute of Humanitarian Law, in San Remo, Italy, and in various seminars for national dissemination officers held by the ICRC in Geneva.

#### *ICRC proposal*

- Every State should review and if necessary strengthen its national system for IHL instruction to the armed forces and consider what support it can provide in terms of international cooperation.

### 3.2.2 Instruction to dissident armed forces

Although it is often difficult to gain access to dissident armed forces, there has been some success in providing them with instruction in the humanitarian rules, especially if such forces are structured and can be reached through a well-defined chain of command.

#### *ICRC proposal*

- Review the efforts made so far in persuading dissident forces to comply with IHL and the humanitarian rules, in order to draw lessons for the future.

#### *Commentary*

The problems experienced in approaching certain dissident forces should not in any way discourage the efforts already being made with regular troops. It is important to convince the latter, and indeed all armed forces, that respect for IHL, far from weakening such forces, strengthens them from a moral and disciplinary point of view and enhances their acceptance by the population. The conduct of regular armed forces in that respect sets a vital example.

## 4. Reaction of the international community to breaches of international humanitarian law, and the repression of violations

*Refs: 7th and 8th recommendations*

The question of the international community's reaction to large-scale violations of IHL goes beyond the scope of the present group of experts, because the situations engendered by such violations constitute a threat to international peace and security within the meaning of Chapter VII of the United Nations Charter and therefore call for a reaction on the part of the UN Security Council. Priority must therefore be given to examining every possible means of preventing violations committed in armed conflicts from reaching a point at which they become extremely difficult to control.

When faced with violations of IHL witnessed by its delegates in the field, the ICRC's first step is to make confidential bilateral representations to the parties responsible and try to persuade them to comply with the humanitarian rules, while cooperating with them so that the victims can receive the protection and assistance to which they are entitled.

When bilateral representations fail to restore an attitude of respect for the humanitarian rules, the ICRC may take public action or draw the attention of other States to certain violations necessarily of concern to them by virtue of Article 1 common to the four Geneva Conventions.

The number of violations being committed in armed conflicts today unfortunately shows that these mechanisms alone are not sufficient to restore respect for IHL in all situations.

### *ICRC proposals*

- Consider how the States could increase their cooperation with the ICRC when, in accordance with its policy, it exceptionally draws their attention to grave and repeated violations which its confidential bilateral representations to the State have failed to bring to an end.
- Re-examine means of putting the system of Protecting Powers into effect.

- Make optimum use of the International Fact-Finding Commission established under Article 90 of 1977 Additional Protocol I, and urge the parties to accept the Commission's readiness to work in all situations of international or non-international conflict, if the parties involved so request.
- Support efforts to punish war criminals, wherever they may be, by compliance on the part of each State with its obligation to exercise universal jurisdiction over the perpetrators of grave breaches and by establishing an international criminal court to prosecute war crimes and crimes against humanity.
- Consider the role that can be played by the International Conference of the Red Cross and Red Crescent with regard to violations of IHL.

## **5. ICRC analysis of measures designed to ensure universal respect for international humanitarian law, the protection of women and children and the rights of refugees, and of situations where government structures have collapsed**

*Ref.: 9th recommendation*

The preparatory meeting suggested that the experts recommend an analysis by the ICRC of these specific issues concerning the implementation of IHL.

The ICRC customarily draws up a report on the principal humanitarian issues worldwide for submission to the International Conference of the Red Cross and Red Crescent.

It is therefore willing to carry out the analysis recommended by the Preparatory Meeting as part of its report to the 26th International Conference of the Red Cross and Red Crescent (Geneva, 4-8 December 1995).

The ICRC nevertheless trusts that this recommendation will not deter the intergovernmental group of experts which will be meeting from 23 to 27 January 1995 from proposing without delay, pursuant to the mandate entrusted to it, any practical measures designed to promote respect for IHL.

# **Meeting of the Intergovernmental Group of Experts for the Protection of War Victims**

*(Geneva, 23-27 January 1995)*

## **RECOMMENDATIONS**

### **— I —**

The Experts recommend that:

- the International Committee of the Red Cross (“the ICRC”) continue its dialogue with States with a view to promoting their adherence to international humanitarian law (“IHL”) instruments and assist them in dealing with issues that arise in this respect;
- the Depositaries of IHL instruments appeal to States not party to them to adhere to such instruments, carry out appropriate promotional activities for that purpose and publish periodically, e.g. in the *International Review of the Red Cross* and other public sources of information, the list of States party to those instruments;
- in their regular programme of activities, the competent organs of the UN and other intergovernmental organisations, universal and regional, encourage States to adhere to specific IHL instruments;
- the States Parties to IHL instruments support the efforts of the ICRC, the Depositaries and the organisations mentioned above, to promote adherence to such instruments;
- the States Parties that have recognised the competence of the International Humanitarian Fact-Finding Commission established under Article 90 of Protocol I additional to the 1949 Geneva Conventions

- (“Protocol I”) support, where appropriate, the Commission’s efforts to promote recognition of its competence; and encouragement of voluntary contributions to increase the Commission’s funds available for that purpose;
- States consider availing themselves of the services of National Red Cross and Red Crescent Societies (“the National Societies”) and national committees referred to in chapter V in the process of adhering to pertinent IHL instruments.

— II —

The Experts recommend that:

- the ICRC be invited to prepare, with the assistance of experts on IHL representing various geographical regions and different legal systems, and in consultation with experts from governments and international organisations, a report on customary rules of IHL applicable in international and non-international armed conflicts, and to circulate the report to States and competent international bodies.

— III —

The Experts recommend that:

- the ICRC, with the assistance of National Societies, the International Federation of Red Cross and Red Crescent Societies (“the International Federation”) and academic institutions, strengthen its capacity to provide advisory services to States, with their consent, in their efforts to implement and disseminate IHL;
- States and National Societies indicate to the ICRC or, as appropriate, to the International Federation the specific needs they may have for such advisory services;
- the ICRC submit reports on its advisory services to the States party to the 1949 Geneva Conventions and other interested bodies on an annual basis, and to the International Conference of the Red Cross and Red Crescent (“the Conference”).

— IV —

The Experts recommend that:

- the ICRC, in carrying out its mandate to disseminate IHL, work together, wherever possible, with other interested bodies including the International Federation, UN organs and specialised agencies, and regional organisations;
- States, on a regional and global basis, promote exchanges of information on dissemination and implementation of IHL;
- the ICRC prepare, in cooperation with experts from various geographical regions, a model manual for armed forces on the law of international and non-international armed conflicts;
- States produce national manuals on the law of armed conflicts, use them as an integral part of military training, and, where possible, consult among themselves with a view to harmonising such manuals;
- States increase their efforts, at national and international levels, to train civilian and military instructors in IHL, and to train in that law members of civilian administrations, armed forces, security forces and paramilitary forces, and members of armed forces engaged in international peacekeeping operations, according to their specific ranks and functions;
- States, where appropriate with the assistance of National Societies, increase the civilian population's awareness of IHL, thus contributing to the dissemination of a culture based on respect for the individual and human life, in all circumstances;
- States, in collaboration with National Societies, take advantage of the celebration of World Red Cross and Red Crescent Day to promote the dissemination of IHL;
- States, where appropriate with the assistance of National Societies and academic institutions involved in public education, make every effort to produce specific programmes and teaching materials designed to imbue students of all ages with the principles of IHL and make those programmes available to interested States;
- States, the ICRC, National Societies and the International Federation, encourage the production of audiovisual materials and the organisation of seminars in order to heighten awareness of IHL issues among representatives of the national and international media;

- the ICRC and States make efforts to provide technical assistance in order to ensure that basic documents of IHL are widely available in national languages;
- the Conference note that religious and ethical values foster respect for human dignity and the principles of IHL.

— V —

The Experts recommend that:

- States be encouraged to create national committees, with the possible support of National Societies, to advise and assist governments in implementing and disseminating IHL;
- States be encouraged to facilitate cooperation between national committees and the ICRC in their efforts to implement and disseminate IHL;
- the ICRC organize a meeting of experts from States having already established national committees and from other interested States, and report on the meeting's conclusions to States interested in the establishment of such committees.

— VI —

The Experts recommend that:

- in order to comply with their commitments in this regard under IHL instruments, States
  - be invited by the Conference to provide to the ICRC any information which might be of assistance to other States in their efforts to disseminate and implement IHL;
  - make every effort to participate in the fullest possible exchange of information on the measures that they have taken to implement their obligations under IHL instruments;
- in order to facilitate these measures, the ICRC
  - continue to participate actively in efforts to disseminate and implement IHL;

- be encouraged to draw up guidelines, from time to time, for the purpose of enhancing the exchange of information;
- collect, assemble and transmit the information provided to States and to the Conference.

— VII —

The Experts recommend that:

- in order to fulfil their basic obligation to respect and ensure respect for IHL in all circumstances, and taking into account, in particular, the vulnerability of civilian populations, and the responsibility of States which violate IHL, States
  - act, jointly or individually, in situations of serious violations of IHL, in cooperation with the United Nations and in conformity with the United Nations Charter;
  - establish, wherever possible, and in conformity with IHL, safety zones, demilitarised zones, humanitarian corridors and other forms of protection for civilian populations, in situations of armed conflict, and cooperate to ensure respect for decisions adopted by the competent UN organs to that end, in accordance with the UN Charter;
  - enact and rigorously implement whatever legislation is necessary to give effect to their obligations to ensure that those who commit, or order to be committed, violations of IHL do not go unpunished; and afford one another the greatest measure of assistance in criminal proceedings, including the provision of evidence and information from relevant sources, e.g. refugees;
  - participate actively in the ongoing discussions within the UN on the establishment of a permanent international criminal court, and implement all national measures to ensure the functioning of the ad hoc tribunals for the former Yugoslavia and Rwanda established by the UN Security Council;
  - cooperate with relevant international and regional intergovernmental organisations and, if they so wish, the International Humanitarian Fact-Finding Commission established under Article 90 of Protocol I, in conducting enquiries into violations of IHL, including by providing them, whenever possible, with funds, experts or logistical support;

- the Depositary organise periodical meetings of the States party to the 1949 Geneva Conventions to consider general problems regarding the application of IHL.

## — VIII —

The Experts call upon the ICRC:

- a) to analyse measures which could ensure, *inter alia*,
  - universal respect for IHL, particularly as it relates to civilians who are more and more often the victims of the use of means and methods of war consisting of systematic and large-scale killings by any armed groups, of “ethnic cleansing” and of other violations of IHL in any armed conflict;
  - full protection for women and children from violations of IHL, taking into account any contribution on these subjects which might be available, in particular from the 1995 World Conference on Women and from relevant UN organisations, including UNICEF and UNHCR;
  - full protection of the rights of refugees and of displaced persons from violations of IHL and the 1951 Convention relating to the status of refugees and its Protocol, taking into account any information which might be available, in particular from UNHCR;
- b) to examine situations where State structures have disintegrated as a result of non-international armed conflicts;
- c) to examine, on the basis of first-hand information available to it, the extent to which the availability of weapons is contributing to the proliferation and aggravation of violations of IHL in armed conflicts and the deterioration of the situation of civilians;
- d) to prepare, in collaboration with the International Federation, a draft recommendation for consideration by the Conference, encouraging voluntary contributions to support programmes for the dissemination and implementation of IHL, with particular emphasis on the protection of war victims.

**Elisabeth Kornblum**

A comparison of self-evaluating  
state reporting systems

Geneva, January 1995

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*Note:* The complete text of the present article was published as an offprint in January 1995. The text of chapters 7, 8 and 9, together with the conclusions and tables, will appear in the March-April 1995 issue.

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# A comparison of self-evaluating state reporting systems

by Elisabeth Kornblum

## ABSTRACT

A self-evaluating state reporting system is a method for implementing international agreements. A self-evaluating state report provides information on the operation and implementation of a treaty regime. Self-evaluating means that a state monitors its own execution of an international agreement in its territory. The information may be submitted to an international institution with a supervisory role or to a technical secretariat.

The key tasks of a supervisory international organization are: collecting information and data, receiving reports on treaty implementation by States, facilitating independent monitoring and inspection, and acting as a forum for reviewing the performance of states or the negotiation of further measures and regulations. Such bodies may acquire law-enforcement and law-making functions.

This report describes the self-evaluating state reporting systems of the United Nations human rights conventions, the Organization for Economic Co-operation and Development, the International Labour Organisation, the United Nations Educational, Scientific and Cultural Organization, the World Intellectual Property Organization, the disarmament treaties and the environment treaties.

There are several characteristics of determining importance for the functioning of a reporting system. In short, these are: the sensitivity of the subject of a treaty; the economic value of the subject; the specificity of the subject; the popularity of the subject in the media; secretarial support; the flexibility of the reporting procedure; a permanent body to which to report; the quality and efficient functioning of the supervisory body; follow-up; admission to an international instrument and the existence of a national monitoring body or procedure.

It should be noted that the allocation of sufficient human and financial resources will be essential to the effectiveness of a reporting system.

## INTRODUCTION

The goal of this paper is to find out what entails a self-evaluating state reporting system, what are the characteristics that render such a system successful, and which of them could be used in a system to stimulate preventive implementation of humanitarian law.

To this end, the systems of the United Nations human rights conventions, the Organization for Economic Co-operation and Development, the International Labour Organisation, the United Nations Educational, Scientific and Cultural Organization, the World Intellectual Property Organization, the disarmament treaties and the environment treaties, are studied.

In addition to reports by States parties to the treaties, a common mandatory implementation mechanism, some conventions contain other implementing mechanisms, such as **fact-finding, research and on-site inspections**.

The counterpart of implementing preventive measures are mechanisms dealing with violations, for example, **complaints procedures** for states or individuals.

The above-mentioned mechanisms are all based on an international agreement. There are also, however, a number of procedures that are not treaty-based and that also deal with observance of international agreements, either to prevent violations or to redress them. There is the United Nations Commission on Human Rights, which uses extra-conventional monitoring procedures, known as **working groups** and **special rapporteurs**, to oversee the application of the principles set out in the various declarations and conventions. Such procedures can be divided into thematic mandates (e.g. torture, extra-judicial executions, sale of children) and country-oriented mandates (e.g. Iraq, Occupied Territories, Sudan, Rwanda). The working groups and special rapporteurs collect information and conduct fact-finding missions, upon the basis of which reports are produced for the consideration of the Commission on Human Rights. The best-known procedure is the **confidential “1503 proceedings”**, that deals with communications alleging that governments have shown a “consistent pattern of gross and reliably attested violations of human rights and fundamental freedoms”.

This paper, however, will deal mainly with non-political, treaty-based, multilateral, state reporting systems.

### CHAPTER I

## AN IMPLEMENTATION MECHANISM FOR INTERNATIONAL HUMANITARIAN LAW DURING PEACETIME?

The Geneva Conventions of 1949 and the Additional Protocols of 1977 do not provide for any reporting system that evaluates the measures taken by a State

party in peacetime to implement humanitarian law. The duties of States parties are clearly stated in the Conventions and Protocols: States must make official translations, adopt national laws and regulations, disseminate and instruct the armed forces and make material preparations.<sup>1</sup> This should already be done in peace-time and States parties should communicate the results of their efforts to one another through the depositary (during armed conflicts through the Protecting Power).<sup>2</sup> States have so far not done enough to meet this obligation.<sup>3</sup>

Based on its mandate to work for the faithful application of IHL (International Humanitarian Law), the ICRC has collected information on national measures to repress violations of humanitarian law; the use and protection of the Red Cross/Crescent emblem; and dissemination activities. The ICRC submitted reports of these subjects on the basis of reports submitted by States parties to the International Conference of the Red Cross and the Red Crescent.<sup>4</sup>

During the 1974-1977 Diplomatic Conference (which resulted in the adoption of the Additional Protocols), the ICRC drafted Article 83 of Protocol I,<sup>5</sup> on dissemination, to include a reporting obligation every four years on measures taken in the area of dissemination. This proposal was not accepted by States.<sup>6</sup>

In 1986, during the XXVth International Conference of the Red Cross and the Red Crescent, Resolution V was adopted. States parties were urged to fulfil their obligation to adopt or supplement the relevant national legislation, as well as to inform one another of the measures taken or under consideration for this purpose. The ICRC received the mandate to "gather and assess" information submitted by Governments and National Societies, and subsequently to report regularly on the follow-up at the International Conferences.<sup>7</sup> Resolution V also invites National Red Cross/Crescent Societies to assist and cooperate with their governments to submit reports.

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<sup>1</sup> GC I, 23, 26, 44, 47, 48, 53; GC II, 39, 45, 48, 49; GC III, 127, 128; GC IV, 144, 145; AP I, 6, 12 to 31, 80, 82, 83, 84, 87; AP II, 19.

<sup>2</sup> GC I, 48; GC II, 49; GC III, 128; GC IV, 145; AP I, 84.

<sup>3</sup> M.T. Dutli, *Mechanisms for the Implementation of International Humanitarian Law*, Expert Meeting on Certain Weapon Systems and on Implementation Mechanisms in International Law (Geneva, 30 May-1 June), Report drawn up by the ICRC, July 1994, 120-127.

<sup>4</sup> K. Drzewicki, "National Legislation as a Measure for Implementation of International Humanitarian Law", in F. Kalshoven, Y. Sandoz, eds., *Implementation of International Humanitarian Law. Research Papers by participants in the 1986 Session of the Centre for Studies and Research in International Law and International Relations of the Hague Academy of International Law* (1989), 109-131.

<sup>5</sup> Article 72, paragraph 3, read: The High Contracting Parties shall report to the depositary of the Conventions and to the International Committee of the Red Cross at intervals of four years on the measures they have taken in accordance with their obligations under this article.

<sup>6</sup> See note 3.

<sup>7</sup> K. Drzewicki, 1989, 127, *IRRC*, No. 255, November-December 1986, p. 346.

The ICRC followed up on this Resolution by requesting States parties and National Societies to inform the ICRC on the measures being taken to fulfil obligations stemming from the Conventions and, where applicable, from one or both Protocols. 62 Governments and 30 National Societies replied to the 160 letters sent to governments, but only a few sent substantive answers. As a result, proposals were made to States parties and National Societies on possible follow-up that could be given to the ICRC's move. One of these proposals was to institute a system of periodic reporting. States would submit initial reports on all measures adopted or being examined, and updates at regular intervals. The reports and the information contained could be assessed, by the ICRC with the help of specialists on different existing legal systems.<sup>8</sup> In all, 24 States and 7 National Societies reacted to this letter. The ICRC also drew up a detailed list of measures to be taken to fulfil the obligations under the Conventions and the Protocol, sent it to States parties and National Societies and published it.

## 1.1 Conclusion

It is not yet possible to speak of a reporting system under humanitarian law. The efforts that have been undertaken by the ICRC have an *ad hoc* character, although they are based on the mandate of Resolution V of 1986, and no discussion with the governments was possible since the 1991 International Conference had to be postponed.

However, governments, in the Final Declaration of the International Conference for the Protection of War Victims in 1993, reaffirmed:

"... the necessity to make the implementation of international humanitarian law more effective. In this spirit, we call upon the Swiss Government to convene an open-ended intergovernmental group of experts to study practical means of promoting full respect for and compliance with that law,...".

This group of experts will convene in January 1995 for the first and only time.

This study further examines possibilities for reporting procedures, with a view to identifying a cost-effective reporting system appropriate to the characteristics of international humanitarian treaty law. Accordingly, this study will focus on the practical aspects of reporting systems used by different international organizations.

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<sup>8</sup> *Implementation of International Humanitarian Law, National Measures*, document drawn up by the ICRC (Doc. 1991 C.I/4.1/1), Geneva, 1991, 7-8.

## CHAPTER 2

### MONITORING OF UNITED NATIONS CONVENTIONS ON HUMAN RIGHTS

Within the United Nations framework, there are several International Human Rights Conventions. To supervise, investigate and monitor the implementation of the provisions of international legal instruments and standards, several mechanisms are used, both treaty-based and non-treaty-based. This paper deals only with treaty-based mechanisms. These are:

- (a) reporting procedures;
- (b) inquiry procedures;<sup>9</sup>
- (c) inter-state complaints;<sup>10</sup>
- (d) communications procedures.<sup>11</sup>

<sup>9</sup> The Convention against Torture has an optional *inquiry procedure* under Article 20. If it appears to the Committee that torture is being systematically practised in the territory of a State, the Committee invites that State to cooperate in its examination of the information and, to this end, the Committee may designate one or more of its members to make a confidential inquiry, which may include a visit to its territory, and hearing of witnesses. The findings are submitted to the Committee, which transmits them, together with its own comments or suggestions, to the State party. The Committee may also decide to request additional information, either from the representatives of the State concerned or from governmental and non-governmental organizations, as well as individuals, for the purpose of obtaining further elements on which to form an opinion. It invites that State to inform the Committee of actions it has taken with regard to the Committee's findings. After all the proceedings regarding an inquiry have been completed, the Committee may decide to include a summary account of the results of the proceedings in its annual report. Only at that stage is the work of the Committee made public. An inquiry was conducted on Turkey. The procedure was started on the basis of an Amnesty International report. At present another inquiry procedure has been initiated.

<sup>10</sup> Three instruments provide for an *inter-state complaints* procedure according to which States parties recognize the competence of a Committee to receive and consider communications from a State party claiming that another State party is not fulfilling its obligations under the instrument concerned: (a) the International Covenant on Civil and Political Rights, Article 41 (optional); 43 States have made the declaration; (b) the Convention on the Elimination of All Forms of Racial Discrimination, Articles 11, 12 and 13 (obligatory); (c) the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 21 (optional); 36 State parties have made the declaration. To date, these procedures have not yet been resorted to.

<sup>11</sup> The *communications procedure* is optional under the First Optional Protocol to the Covenant on Civil and Political Rights, under Article 14 of CERD and under Article 22 of CAT (35 States accepted). A fourth procedure is envisaged under Article 77 of the Migrant Workers Convention, which is not yet in force. Individuals subject to the jurisdiction of States parties can complain to the Committee on the violations of their rights. The Communications Branch of the United Nations Centre of Human Rights makes a preliminary analysis of the Communication to decide to which Committee the communication should be submitted. Communications complaining only of torture or racial discrimination are more rare. Most complaints contain an element of civil and political rights. For that reason, most complaints are directed to the Human Rights Committee.

The five United Nations Conventions on Human Rights, with State **reporting procedures** and a secretariat in Geneva, which will be treated in this paper are:

1. the International Covenant on Civil and Political Rights and its Optional Protocol (HRC);
2. the International Covenant on Economic, Social and Cultural Rights (CESCR);
3. the Convention on the Rights of the Child (CRC);
4. the Convention on Elimination of All Forms of Racial Discrimination (CERD);
5. the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

Three Conventions will not be discussed extensively in this paper. The Convention of Elimination of All Forms of Discrimination Against Women (CEDAW), whose secretariat is in New York. The International Convention on the Suppression and Punishment of the Crime of *Apartheid* hardly functions, and in Chapter 9 a lesson is drawn from it. The Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families has not yet entered into force.

## 2.1 Reporting procedures under the Conventions

In general, all state reporting systems of the Human Rights Conventions follow similar procedures. Within one or two years after ratification, a State party has to submit an **initial report** and thereafter every four or five years a **periodic report**.

The reports are submitted to a monitoring body of 10 to 18 independent experts, serving in their personal capacity. This body is usually called a Committee. To ensure that all principal legal systems are represented, the Committee members are chosen on the basis of equitable geographical distribution.<sup>12</sup> A Committee member is responsible for analysing the report from a certain State, for preparing questions and for leading the discussion when its report is taken up for consideration by the Committee.

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<sup>12</sup> The members are elected by a secret vote, so it is possible that equitable geographical distribution is not realized.

All Committees have established **guidelines** regarding the form and contents of initial and periodic reports. Every report should be preceded by a “**core document**”. This document submits basic information on the conditions and circumstances in a State. A core document, once prepared and updated, can be used for all reports under the UN human rights system to facilitate the reporting.<sup>13</sup> As yet, there are only 35 States who have produced a core document.

For some Committees, before a report is considered, a list of questions is prepared by a pre-sessional **working group**, to give a State a better chance to participate constructively in the dialogue with the Committee, and to identify in advance the questions that might most usefully be discussed with the representatives of the reporting States. The list is sent directly to a representative of the State concerned. States parties are asked to provide the replies to the list of issues in writing, if possible, and to do so sufficiently in advance of the session at which their respective reports are to be considered, in order to enable translation and distribution to the members of the Committee. It is made clear that the list is not exhaustive.

The State report is then presented to a Committee in a public session by a team of representatives from the reporting government, which is questioned on specific issues and situations. In their questions and comments, the Committee members may take into account information supplied by other sources than the state report, for example, information from other UN bodies, other international organizations or NGOs. The Committee on the Rights of the Child works with an NGO coordinator, who has also published a handbook for NGOs on how to help the reporting system under the CRC. A special NGO called ARIS (Anti-Racism Information Service)<sup>14</sup> helps other human-rights groups and individuals by giving information on CERD, notifying the appropriate organs when their country will be discussed, and sending press releases immediately after the discussion in CERD to the major news media in the countries concerned.

After the presentation of the State report and deliberations by the Committee, suggestions, concluding observations or general recommendations are adopted. They are drafted by the designated country rapporteur, with the help of the Secretariat. The text reflects the views of the Committee as a whole. The form of the suggestions is according to the guidelines established by the Human Rights Committee.<sup>15</sup> The practice of adopting concrete recommendations has only recently developed.

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<sup>13</sup> U.N. Doc. CAT/C/X/Misc.3/Rev.1.

<sup>14</sup> There are 7 members of CERD in the ARIS Advisory Committee.

<sup>15</sup> See note 13.

In the concluding observations and general recommendations, the Committee draws attention to the progress achieved since examination of the previous report and expresses its concern over factors and difficulties impeding the application of the provisions of the Convention and subjects of concern. Most importantly, the concluding observations contain specific suggestions and recommendations on steps which the government should take to implement the treaty in question more effectively.

The observations, which are made public after a short delay, serve as a suggested "programme of action" to be undertaken by the State before its next report and are given as wide a circulation as possible. It is now much easier for States to follow up the suggestions of a Committee and it is also much easier for NGOs and other pressure bodies to confront governments with certain shortcomings. Each Committee reports on its findings to the Economic and Social Council or the General Assembly.

The follow-up to a report can take different forms: States that have requested help can be given **advisory services** and/or **technical assistance**. The CRC is empowered to transmit, as it may consider appropriate, to the specialized agencies and other competent bodies, any reports from States parties that contain a request, or indicate a need, for technical advice or assistance, along with the Committee's observations and suggestions. CERD can send a **mission** of experts to a State, between reports, to provide technical assistance in preparing the next report and in devising means to eliminate racial discrimination; it may also help to prompt a dialogue for a peaceful solution of issues concerning racial discrimination.<sup>16</sup>

Under the CESCR, when a State is very long overdue with its reports, or if a serious situation gives rise to concern, the State is requested to accept a mission consisting of 1 or 2 members of the Committee, to collect information, to continue a constructive dialogue with the State party, and to enable it to prepare the next report. The decision to send a mission is taken only after the Committee has satisfied itself that no other adequate approach is available and that the information in its possession warrants such an approach. The Committee identifies specific issues in relation to which the representatives have to gather information from all available sources.<sup>17</sup> Missions have been requested to the Dominican Republic twice, and to Panama and the Philippines once each. These States have so far rejected every offer of assistance, but the dialogue is kept open.

A Committee may bring a State under review, or keep it under continuing review, by requesting it for further or **additional information**. Such a request

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<sup>16</sup> See note 13.

<sup>17</sup> See note 13.

may also be applied in cases where a State has fallen far behind in its reporting obligations. This procedure has been recently developed by a number of Committees in an effort to respond to serious human rights situations, with a view to preventing further violations, particularly where there is a risk of escalating violence or armed conflict.

The **urgent action** procedure is used by the CRC and the HRC in relation to a State party in a serious situation, when there is a risk of further violence. The situation has to be brought up by a UN body or another competent body or *ex officio* by the Committee itself. The Committee considers the urgent action procedure as part of the reporting system. So far, all States have complied with the Committee's request and have participated in consideration of the report requested under an urgent action procedure.

A Committee can only use persuasion to compel States to submit their **overdue reports**. When a report is four to six months overdue, a reminder is sent to the Minister of Foreign Affairs, after which the Chairperson of the relevant Committee sends a personal letter to the Minister of Foreign Affairs. At the same time or a little later, Committee members use their personal contacts with state representatives to urge them to submit a report. CESCR, CERD and the HRC have developed a special practice in dealing with States whose reports are long overdue. It has been proposed that States whose reports are more than 4/5 years overdue might be reviewed on implementation of the Convention in the absence of their reports, and invited to send representatives to participate in the relevant meetings. States who decide to send in their reports after such a long time can submit their initial and second reports in one document. In addition, States with long overdue reports are invited to avail themselves of the technical assistance of the UN Centre for Human Rights. As a result of this change in policy, two States, whose reports were long overdue, have asked for advisory services and technical assistance in preparing the reports. As a first step, their representatives will be sent to an international course specifically aimed at training government officials in the mandatory reporting system, to be held at the ILO's International Training Centre in Turin in November 1994, within the context of the Fellowship Programme of the Centre for Human Rights.<sup>18</sup>

## 2.2 Functions of the Secretariat

Each Committee is serviced by the International Instruments Branch of the United Nations Centre for Human Rights in Geneva. In principle, every Con-

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<sup>18</sup> Based on the draft annual report of the 12th session in April 1994, CAT/C/XII/CRP.1/Add.3.

vention has a Secretariat comprising 2 professionals (graded P4 and P2) and 1 general-service staff member. In practice, however, a Convention is serviced by 1 professional and a (part-time) secretary.

The Secretariat **organizes** the sessions of the Treaty bodies. It does this by sending *notes verbales* to States parties: to request reports, to remind States that they have to submit reports, and to invite States to the sessions. The Secretariat also prepares the reports, the documents for the sessions and the documents containing States' reports. This entails reading, adding references, giving symbol numbers, translating and distributing. It likewise organizes the days of general discussion for the CESCR and the CRC and coordinates the sessions calendar. It keeps track of the status of the Conventions and the reservations, lists the state reports received, and compiles the relevant international instruments. When a Committee is in session, all the servicing staff of the other Committees help to prepare drafts, answer questions in the sessions and assist in any way that is necessary.

On a substantive level, the Secretariat offers service to Committee members by collecting information on countries, analysing the information, asking UNICEF, the ILO, NGOs and other relevant organizations, even regional or local bodies, for additional information. It researches academic articles and consults with experts. When a State party needs assistance with the preparation of a report, it is the Secretariat that provides this help. It drafts the list of issues that is the guideline for every Committee meeting and the agenda, as well as the general comments, suggestions, general recommendations and concluding observations. It drafts the annual or bi-annual report to the General Assembly, also the reports to ECOSOC and the Commission. In addition, the Secretariat prepares reports on actions taken pursuant to the decisions adopted by Committees at previous sessions.<sup>19</sup> The Secretariats of the CRC and of the CESCR produce country analyses and country files.

## 2.3 Reservations concerning the system

The reporting systems relating to UN human rights give rise to the following observations:

- (1) The number of overdue reports will not decrease as long as the capacity of the Secretariat to process reports is not increased.<sup>20</sup>

<sup>19</sup> Resolution A/47/41, page 2 paras 2 to 8.

<sup>20</sup> As long as this is the case the Committees will not put overmuch pressure on States to submit their reports.

- (2) There is reporting fatigue, since States sometimes have to report up to six times a year on closely related fields.
- (3) The effectiveness of the system is impeded by the absence of a consistent follow-up procedure.
- (4) A good diplomat will be able to explain away all allegations of a Committee, without any relevant changes taking place in human rights within a State.
- (5) Six working languages constitute a heavy burden for the UN.
- (6) The Committee's experts are not paid for their services, apart from travel and living expenses. So far this has not been a problem, but when Committee sessions take up more than three months a year a normal salary may be required.<sup>21</sup>

## 2.4 Concluding remarks

States should see the reporting procedure as a useful way of taking stock, by assembling national experts and evaluating progress. The reporting systems are undergoing major changes now that the Cold War has ended: for many years the East-West controversy paralysed the decisiveness of the Committees.

The reporting procedure is a door towards advisory services and technical assistance, provided by the Centre for Human Rights. This is true, for example, for Vietnam, which changed its juvenile justice system with international technical assistance, on the recommendation of the Committee on the Rights of the Child.

The experiences of the CERD and the CAT demonstrate that it is not wise to make the funding of the Committees dependent upon the States parties, since it has led to curtailment of Committee sessions, due to the non-compliance of some States parties with their financial obligations. Instead, complete funding should come from the regular budget of the United Nations.

From the CERD it can also be learned that it is best to keep reporting procedures as flexible as possible. A rigid system has a tendency to become obsolete.<sup>22</sup>

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<sup>21</sup> The experts for the Council of Europe are paid at D1/D2 level.

<sup>22</sup> CERD has a gentleman's agreement with the States parties that one report per 4 years is enough, not, as is stated in the Convention, every two years (Article 9, para. 1). A brief updating report can be submitted in the intervening years.

The system whereby a permanent body is installed, to be convened when needed, functions much better than an *ad hoc* body.<sup>23</sup>

For the CRC, it is possible to note progress in legislation, in coordination mechanisms put in place, and in a certain didactic effect.

A Committee is not a tribunal. It neither passes judgement nor does it condemn. The purpose of the presentation and the examination of the report is to start a constructive dialogue with the reporting State. The Committee wants to establish the *de jure* and the *de facto* situation in the reporting State, which it endeavours to assist to abide by the obligations assumed with ratification of or accession to the Convention. Committees therefore expect their observations to be duly transmitted by the representatives of the reporting State participating in the dialogue to all relevant national authorities involved in implementation of the Conventions.<sup>24</sup>

### CHAPTER 3

## ORGANIZATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT

The OECD is the main forum for monitoring economic trends in its 25 member countries, representing the free-market economies of North America, Western Europe and the Pacific. The aim of the OECD is to achieve the highest sustainable level of economic growth and employment by coordination of national policies and by stimulation and harmonization of aid to developing countries. Member countries report constantly on trends and data in their territories. On the basis of analyses of these data, they coordinate their policies. The procedure of sharing

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<sup>23</sup> The Group of Three, established by the Convention against Apartheid is an *ad hoc* body and meets only once every 2 years. The problem with such an *ad hoc* group is that between meetings there is no body to take any action. This has become painfully obvious during the recent elections in South Africa, when the body could not convene, because at that time the Group of Three did not have any members.

<sup>24</sup> — *Manual on Human Rights Reporting*, U.N. Doc. HR/PUB/91/1, (1991), 187-188.  
— *Orientation Manual, The U.N. Commission on Human Rights, its Sub-Commission, and related procedures*, Minnesota Advocates for Human Rights (1993).  
— *A Guide for Non-Governmental Organizations Reporting to the Committee on the Rights of the Child*, The NGO Group for the Convention on the Rights of the Child (1994).

observations and information is a slow one, but after 33 years there are enough results for the member countries not to want to change the system.

### 3.1 Organization of the OECD

The main body of the OECD is the **Council**, assisted by the **Executive Committee**. In 150 specialized committees, **expert groups and working parties**, the major part of the Organization's work is carried out. There are, moreover, **5 semi-autonomous bodies** within the framework of the OECD. These bodies are, as a rule, composed of representatives either from the capitals or from the permanent delegations to the OECD. All these bodies are serviced by the international **Secretariat**, headed by the Secretary-General of the OECD. This Secretariat forms the major part of the OECD.

Member countries meet every 2 weeks at ambassador level in the **Council**. Each member country maintains a permanent diplomatic delegation headed by an ambassador. The ambassadors are appointed especially to the OECD; delegations vary in size from 5 diplomats (UK) to more than 60 (Japan).

The Council meets once a year on ministerial level with the Ministers of Economic Affairs and of Foreign Affairs. Once a year there is also a high-level<sup>25</sup> meeting on development. Every 2 years there is a high-level meeting on a subject to which a Committee wants to focus the attention of the member States. The Council, which operates on the principle of consensus, produces Decisions (legally binding on member countries) and Recommendations (expressions of political will). Member countries implement the Decisions and Recommendations in their national policies.

There are committees on Economic Policy, on Economic and Development Review, on Development Assistance, on Trade, Capital Movements and Invisible Transactions, and on 20 other subjects.

The delegates to the committees, working parties and expert groups all require statistical and other background papers. The OECD therefore gathers these data and policy information and standardizes them. It makes them available to member countries and to the public in an internationally comparable form. On the basis of these data, suggestions are made for policies in a member country. After a certain period the member country will make an assessment report on

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<sup>25</sup> High-level, because not every country has a separate ministry for development.

the results of the applied policy. Committees do not have official rules of procedure, they have only unofficial working methods, which have developed over the years; their unofficial nature makes the committees very flexible.

Of the **various bodies**, the Development Assistance Committee is the most interesting for the ICRC, since last year it included in its research some observations on landmines, which they had conducted with the help of the ICRC.

The staff of the **Secretariat**, which uses 2 official languages, French and English, is drawn from all member countries. Traditionally, the upper echelons of the OECD are geographically distributed, but lower down in the organization this is not the case. The Secretariat disseminates and analyses reports. It organizes 4,000 meetings a year to discuss the reports. The Secretariat, based in Paris, consists of 1491 people (829 at the professional level) and has an annual budget of FFR 1,453,006,097 (1992). The Secretariat is divided into ten specialized Directorates, corresponding broadly to the principal committees, which themselves mirror the main departments of national governments.<sup>26</sup>

### 3.2 Reporting mechanisms

Reporting systems have been developed in most bodies of the OECD. The three main reporting systems of the OECD will be described and the reporting mechanism of one body will be studied in detail, following the same method as for the United Nations Human Rights Treaties.

The reports to the **Economic and Development Review Committee** (EDRC), to the **Development Assistance Committee** (DAC) and to the **Committee on Competition, Law and Policy** (CCLP) are identified as the three main reporting procedures of the OECD. Once every 4 years an environmental analysis is also requested.<sup>27</sup>

The reporting procedures for these three Committees are similar. For each country, reports are prepared by three teams: the Secretariat of the OECD; the country itself; and the experts or examiners, who are people from two other countries designated to make a report on the third country. These three reports are combined into one report by a major economist of the OECD, and the

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<sup>26</sup> From the leaflet, *OECD in Brief*. Further information was obtained from interviews with Mrs. Ballivet, of the Geneva office of the OECD, and from *The Annual Report of the OECD 1992*.

<sup>27</sup> By Mrs. Ballivet, of the Geneva Office of the OECD.

combined report is then presented to the Committee, which discusses it and publishes a summary.

Usually two or three countries are treated by one major economist, aided by approximately 10 junior economists. Such a cluster of economists is called a desk. There are 12 desks for EDRC and 12 desks for DAC. CCLP works with heads of division and 7 major economists. There are many OECD experts who give advice on specific areas touched upon by the reports.

The EDRC monitors and assesses economic policies of individual countries on an annual basis. It is a multilateral surveillance process covering both macroeconomic and microeconomic policy issues. This annual examination is the main instrument for the Organization's surveillance of overall economic policies in each member country. Special issues in specific countries are also reviewed. Exceptionally, surveys of Non-Member States are conducted, e.g., when such countries wish to become OECD members. The reports are published in the *OECD Economic Surveys*. In 1994, 8 surveys were published, in 1993, there were 15, making 23 in all, those for Belgium and Luxembourg being published together. Surveys were also published of "Partners in Transition": for Poland in 1992; Hungary in 1993 and the Czech and Slovak Republics in 1994. A non-member survey was also made of Mexico in 1992, before Mexico became a full member of the OECD.

In the Committee, questions can be asked on the functioning of different economic systems in a country. For example, Switzerland is always asked to explain its financial system.

Once every two years a Member State has to report to the CCLP. This Committee reviews developments in competition policy, law and jurisprudence in OECD member countries at each of its semi-annual meetings. During 1989/90 and 1990/91, 20 and 19 reports, respectively, were reviewed. The country reports are made available to the public by the individual governments. The summary is made available to the public on the authority of the Secretary-General of the OECD.

Every 2 years, the DAC reviews the quantity and quality of development aid given by a country to other countries. There are no fixed dates of publication and there is no list of reports that have been published. This makes it impossible, at present, to give more details on this reporting procedure.

The reporting mechanism of the **Financial Action Task Force (FATF)** will be examined in detail. The FATF is not a real OECD body, but was established by the G7 Economic Summit in Paris in 1989. It consists of representatives of States that are interested in decisive action against the drug problem and that

therefore wish to examine measures to combat money laundering. The secretariat is provided by the OECD, though not all members of the FATF are OECD members.

In April 1990, the FATF issued a report with 40 Recommendations. Evaluation of the progress made by FATF members in implementing the 40 Recommendations is the only area relevant to this paper of the three main areas of work on which the Task Force has focused its attention. The Task Force monitors the performance of its members using two methods of reporting, agreed in 1991: annual self-assessment by member countries, and a mutual evaluation process.

Self-assessment by member countries is conducted on the basis of questionnaires dealing with the Recommendations on legal and financial matters. These questionnaires have become specific and detailed, inviting countries to supply appropriate narrative information. Most members take the opportunity to do so. The FATF Secretariat draws up two grids of the responses, showing the state of implementation of the Recommendations. These results are then discussed in working groups. Although there inevitably remain some differences in interpretation of some of the questions, the exercise now provides a generally objective analysis of the performance of members in implementing the 40 Recommendations.

The **mutual examination process** has already examined 12 countries. The goal is to examine each member once, over the period 1991-1994. The procedure is as follows: the chairman of the FATF selects the FATF members to be examined in the coming year. In consultation with the country to be examined, the Chairman of the FATF selects at least three examiners (country representatives), taking into account the expertise and the background of the examiners and their countries. Each evaluation team should include examiners from at least two different countries.

First, all relevant quantitative and qualitative information is assembled and processed in an analytical assessment, in order to secure an objective assessment of the situation in a given country. This is achieved on the basis of the information provided by the examined country itself, through its response to a comprehensive and standardized *mutual evaluation questionnaire*. The information-gathering process is completed through a variety of interviews carried out by the examiners during an *on-site visit*. Subsequently, the Secretariat is in a position to write a confidential draft report in the light of the examiners' assessments and under their responsibility.

The draft report contains a tentative evaluation, which is submitted to the examined country, and then discussed in a joint meeting of the legal and financial

working groups. The examiners present their report to the joint group, and other FATF members are selected to lead the discussion. The purpose of this phase is to verify the validity of the facts and the state of implementation. This intensive peer review is a necessary means for reaching a clear and unbiased assessment of where the country stands and of the areas in which further efforts are warranted. The report is then revised as necessary by the Secretariat in the light of these discussions, and the conclusions are reflected in the final report, to be approved by the FATF plenary. The report itself remains confidential, but an executive summary thereof is prepared and included in the annual report of the FATF.

This is the reporting mechanism for the FATF. To preserve the informality of the FATF, membership will not be increased.

### 3.3 Conclusion

In principle, the reporting procedures of the OECD are voluntary. However, the Organization admits a State only after it has made sure that it fits into the "working tradition/atmosphere" of the OECD. This means that failure to report as agreed is frowned upon. Compliance with the reporting procedure is guaranteed not by official regulations, but by unofficial peer pressure. When a member country fails to produce an expected assessment report, the Council will continue to ask for the reasons.

States also send all statistical information produced by their ministries to the OECD, which processes it. Non-compliance, therefore, cannot be hidden. Furthermore, field missions can be sent to a country, and the OECD sponsors research on specific topics (e.g., agriculture) in a Member State. In this way the OECD remains constantly aware of the most recent trends and the best possible reactions to them.

The ultimate aim of the reports is economic development, which is not a sensitive issue. Every country wants to learn more on how to achieve economic growth, and information is shared willingly. Policy meetings are conducted at ministerial level or just below. This makes for easy implementation, when decisions have been taken.

Meetings are in general confidential; only some reports of committees are published. The results of the reporting procedures are usually stated only in general terms. The confidentiality encourages openness in States that might not want to share some policies with the press. The OECD does not wish States to report when there are elections, since in the past OECD reports have been used in campaigns, a practice of which the Organization strongly disapproves.

The OECD puts a lot of effort into a small number of countries. It works in a very concentrated field, not a broad one such as that of the Human Rights Conventions. It works closely, when it so chooses, with all kinds of related international organizations. It does not hesitate to establish regional units to keep the original entity small and workable. This might explain the 150 committees, working groups and agencies that form part of the OECD.

The reporting procedures for the OECD appear, at first glance, to be extremely successful in their goal of implementing the planned recommendations. However, some comment is called for. First, the recommendations that the OECD makes and tries to implement are usually not very far-reaching, and often States have already decided to do something about the issue. It is not really the OECD that initiates innovative actions. Second, the amount of attention focused on countries that have to report is tremendous: for each reporting country and each working group there are two procedures to check implementation, backed up by studies of the newest developments in the field and the possibility of on-site inspections. These enormous efforts explain the size of the OECD, and the size of its budget. It is an effective body, but it functions at high cost.

## CHAPTER 4

### THE INTERNATIONAL LABOUR ORGANISATION

The ILO is committed to ensuring that all human beings, irrespective of race, creed or sex, are able to pursue their material well-being and their spiritual development in conditions of freedom, dignity, economic security and equality. The ILO is a tripartite organization; States' delegations to the International Labour Conference consist of representatives of employers' and workers' organizations, as well as of governments. The Conference adopts Conventions and Recommendations to translate the constitutional objectives into more specific rules and guidelines.

The ILO has a reporting system, known as a **supervisory procedure**, and a complementary complaints system, called **special procedures**, all geared towards implementation of international labour standards.

Under the **supervisory procedure**, reports are prepared and supplied by governments, but national organizations of employers and workers are entitled (under the tripartite system) to make written observations which, together with the reports of the governments, are examined by the **Committee of Experts on the Application of Conventions and Recommendations** (CEACR). The CEACR studies annual reports under Article 22 of the ILO Constitution, on

implementation of Conventions to which States are party; under Article 19, on the implementation of Conventions and Recommendations that are not ratified by States but adopted by the Conference; and under Article 35, on non-metropolitan territories.

The CEARC consists of 20 independent persons nominated in their personal capacity by the Director-General and appointed by the Governing Body of the ILO. The CEARC meets once a year, in private sessions, and conducts entirely written proceedings. It is a very technical body. A report with comments is submitted to the **Committee on the Application of Conventions and Recommendations of the Conference** (CACRC), usually unanimous except for the occasional dissenting opinion. To reduce the workload of the Committees, the reporting frequency has been brought down. Most remarks are directly communicated to governments (**direct requests**) and only the most essential comments (**observations**) are put in the reports.

The CACRC plays a more political role, and discusses the findings of the CEACR. It considers breaches of the obligations by member States and possible remedies, in the presence and with the participation of representatives of the governments concerned. The CACRC is a tripartite committee, the members of which are appointed by the Conference each year. Its meetings are public, its proceedings are conducted orally, and it may hear and examine witnesses. The CACRC's terms of reference are laid down in Article 7 of the Conference Standing Orders. The CACRC concentrates now only on specific subjects and breaches. It publishes a special list showing States in which progress has been made, those in which no progress has been made, and States facing specially difficult situations.

The criterion for this reporting system is the time that has elapsed since the last report and the ratification of a Convention. Flagrant injustices brought to the attention of the ILO may give rise to a request for an additional report from the relevant government.

There are now 6,000 ratifications of the Conventions and the supervisory bodies have registered more than 2,000 cases of progress, i.e., cases of national legislation and practice being changed to meet the requirements of a ratified Convention as a result of comments by the supervisory bodies.

One example of special procedures is the **representation procedure**, where an employers' or workers' organization may submit allegations of failure by a Member of the Organisation to adopt satisfactory measures within its legal system for the application of a Convention to which it is a party. If the representation meets the formal requirements of admissibility, it is sent to the government concerned and the case is submitted for examination by a tripartite

committee set up for the purpose within the Governing Body. Its conclusions and recommendations may be published.

The **complaints procedure** is more elaborate than the representation procedure in terms of the rules of the Constitution that govern it. Under this procedure, any member State of the ILO may file a complaint to the Office against another member which, in its opinion, has not adopted the necessary measures to give proper effect to a Convention ratified by both members. This procedure provides all the guarantees of a regular procedure. It should be pointed out that the complaints procedure may also be initiated by the Governing Body on its own initiative, or by a delegate to the Conference.

Complaints are referred to commissions of inquiry appointed specifically for each case and composed of independent persons of international repute. The conclusions and recommendations of a commission are published in the ILO Official Bulletin and may be challenged before the International Court of Justice, whose ruling is final. If a Member fails within the prescribed time-limit to give effect to the recommendations of the commission of inquiry or the decisions of the International Court of Justice, the Governing Body may recommend to the Conference any measures it deems necessary to ensure that the recommendations are observed. The government against which the complaint is filed may at any time inform the Governing Body that it has taken the necessary measures to implement the recommendations of the commission of inquiry or the Court's decision. In practice, no economic or other sanctions have been applied in the context of this procedure.

There is also a special procedure for **complaints concerning freedom of association**, which rests on the fundamental principles deriving from the Constitution. There are two supervisory bodies for this special procedure, the Fact-Finding and Conciliation Commission on Freedom of Association and the Committee on Freedom of Association, a tripartite committee that has become the centre of activity. A special procedure that has never yet functioned deals with equal treatment.

## 4.1 Conclusion

The ILO is best known for its supervisory procedure. The number of reports and the willingness of States to report is impressive. On the one hand, this can be attributed to the long-standing practice of reporting, on the other hand to the tripartite system, whereby at national level the governments can be pressured into reporting, though it is not obvious how active the workers' and employers' organizations are in pressuring the governments to submit a report. It should be

noted that governments are extremely lax in meeting their obligation to send copies of their reports to the workers' and employers' organizations, and this task very often falls to the ILO.

The system has some noteworthy characteristics. The legal discussion of the reports by the CEACR is followed by a political discussion at the International Labour Conference, which draws the conclusions. The annual reports also cover unratified Conventions and Recommendations. When comments have been made on a situation in a State, the ILO will continue to enquire whether the situation has been resolved, sometimes over periods of more than 30 years.

The ILO trains government officials through seminars and informal advisory missions, among other things on the preparation of reports. The UN Committees sometimes direct government officials to the ILO training centre in Turin, as a form of technical assistance. It is unclear how useful this is, since the officials are individuals within their governments. It might be more effective to invite officials from two or more departments or ministries, so that they get to know each other and are able to combine their knowledge in a well-prepared report.

## CHAPTER 5

### UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION

UNESCO has three major Conventions: the Convention for the Protection of Cultural Property in the Event of Armed Conflict (1954), the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Cultural Property (1970), and the Convention Concerning the Protection of the World Cultural and Natural Heritage (1972).

#### 5.1 The 1954 Convention

The 1954 Convention was modelled on the 1949 Geneva Conventions. States undertake to **safeguard** and **respect** movable and immovable cultural property. "Safeguarding" means making preparations, in time of peace, such as the training of armed forces, marking of cultural property, inclusion in the "International Register of Cultural Property under Special Protection" kept by the Director-General for special protection. "Respect" applies in times of armed conflict, whether international or not. No military action may cause harm to cultural

property; it will be protected against thieving and plunder; and no reprisals will be conducted against it.

There are 81 States parties to the Convention and 66 States parties to its Protocol. The "International Register of Cultural Property under Special Protection" includes sites in the Netherlands, Austria, Germany and the Holy See (Vatican).

In Article 26, paragraph 2, a simple reporting system is laid down. Paragraph 1 stipulates that States shall communicate official translations of the Convention, while paragraph 2 states that every four years the States shall forward a report to the Director-General of UNESCO,

"...giving whatever information they think suitable concerning any measures being taken, prepared or contemplated by their respective administrations in fulfilment of the present Convention and of the Regulations for its Execution".

The Director-General has invited States to forward their reports to him on six occasions, and these reports were published in 1962, 1967, 1970, 1979, 1984 and 1989.

Germany is the only State with a 100% record (i.e., it has contributed to each of the five reports compiled and used since it ratified the Convention in 1967). Poland has submitted 5 reports out of a possible six, the Holy See, The Netherlands, Switzerland and Syria have each submitted four out of a possible six. On the other hand, 39 States have never submitted a report (though it should be noted that several of these have become parties to the Convention by accession or succession since the last compilation of national reports was prepared in 1989). It is difficult to calculate the exact number of periodic reports that should have been submitted, because of the differing rates of completion of the ratification process, but it appears that only 20% of those that should have been prepared by States parties according to the requirements of the Convention have actually been submitted.<sup>28</sup>

An analysis of informational content of the reports shows that the geographical spread of information is uneven, and that those States apparently least exposed to the danger of war, owing to their status or their geographical position, sometimes announce a multitude of measures that would be more useful in other countries.

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<sup>28</sup> P.J. Boylan, *Review of the Convention for the Protection of Cultural Property in the Event of Armed Conflict (The Hague Convention of 1954)* (1993), 89-90.

There are several reasons why the reporting system does not function very well.<sup>29</sup> The Convention does not specify what kind of peace-time preparations are meant.<sup>30</sup>

No guidelines on the reporting procedure have been produced, also because the UNESCO Division of Physical Heritage, with a staff of three professionals, deals with the 1954 and the 1970 Conventions and 10 Recommendations.

Reports are addressed to the Director-General. There has been a proposal to establish a committee of independent experts to examine the reports and to make comments on them which are transmitted to States. So far this idea has not been put in practice.<sup>31</sup>

At times, the contents of a report have been in total contradiction with the facts observed by a rescue mission conducted by UNESCO and this has made staff wary of the truthfulness of the reports. However, no supplementary measures are taken to promote the Convention and its observance. The procedures for the "special protection list" are so stringent that States are hindered from adding sites to it. Furthermore, the procedure has been misused for political ends, and the fact that the system cannot protect itself against this has not helped.

Another criterion for the effectiveness of the Convention is its application in times of armed conflict. UNESCO can act in three ways:

- (1) Initiatives by the Director-General: Croatia; El Salvador/Honduras, 1969; India/Pakistan, 1971; Greece/Turkey on Cyprus, 1974; Iran/Iraq 1980. In 2 cases the authorities responded that they would honour their obligations. Nigeria, faced with an internal conflict in 1968, responded that it observed the Conventions.
- (2) Technical cooperation: Kampuchea; Israel/Egypt 1957; Cambodia 1970; Tyre 1982;
- (3) The establishment of control procedures such as Protecting Powers and/or a Commissioner-General (used once in a Israel/Arab conflict).

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<sup>29</sup> K.J. Partsch, in *Istituto internazionale di diritto umanitario, La protezione internazionale dei beni culturali/The international protection of cultural property/ La protection internationale des biens culturels*, "Acts of the Symposium organized on the occasion of the 30th Anniversary of the Hague Convention on the Protection of Cultural Property in the Event of Armed Conflict", Rome (1986), 196.

<sup>30</sup> See note 28.

<sup>31</sup> See note 29.

In view of the extent of cultural heritage threatened by armed conflicts, this is not a long list.

Until the Gulf War the 1954 Convention was considered to be more or less dormant. Since then the Convention has received more attention, also because it has been invoked in the conflict in former Yugoslavia. However, there has been no noticeable effect on the submission of reports by States, since so far, only six States responded to the latest request to report (deadline 1st of June 1994).

## 5.2 The 1970 Convention

The 1970 Convention applies in peacetime and in times of conflict, but to movable property only. Each State party establishes regulations regarding operations that affect property situated in its territory and decides which transfers of ownership, import or export are legal and which are not legal. There are 77 States parties to this Convention.

Under Article 16, States have to submit periodic reports on legislative and administrative provisions that they have adopted and other action that they have taken for the application of this Convention, together with details of the experience acquired in this field. The reports must be submitted to the General Conference of UNESCO, which decides the manner and the dates of submission of these reports.

Hitherto, this Convention has been dormant. Ratification has been slow, and mainly by art-exporting countries. The Executive Board of UNESCO created a Committee on Conventions and Recommendations (Resolution 104 ex. 3.3 of 1978) to examine the reports and to make comments on them which are transmitted to the States,<sup>32</sup> but because the Convention (especially core Article 3) is very vague, States do not adhere to it. The reporting procedure has for the moment been abandoned. Considering that illegal trade in and export of cultural property occupy second place in the global list of illegal activities (first place being taken by the trade in narcotics), it is clear that the need for this Convention has not disappeared.

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<sup>32</sup> Commission IV, Examination of Item 8.4, Reports of Member States on the Action Taken by Them to Implement the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970), Record of the General Conference, Reports, Bd.2, 24th session, Paris, 20 Oct.- 20 Nov. 1987. Report of the Committee on Conventions and Recommendations of the Executive Board on Proposals for the Implementation of the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, 22 C/93.

### 5.3 The 1972 Convention

The 1972 Convention works to limit damage to immovable natural and cultural heritage, i.e., damage not only as a result of man-made disasters (e.g., war), but also of natural disasters. To this end, the Committee for the Protection of Cultural and Natural Heritage of Outstanding Universal Value (the World Heritage Committee) was created.

This Committee established a World Heritage List and a List of World Heritage in Danger, on the basis of inventories drawn up by States parties. States can ask the Committee for information, assistance in preservation or restoration. A World Heritage Fund has also been established: this is a UNESCO trust fund financing the Convention and its organs. There are 132 States parties to the Convention, and the World Heritage List contains 411 properties (309 cultural sites, 87 natural sites and 15 mixed sites). The UNESCO World Heritage Centre and several advisory bodies (for example, international NGOs) are used to execute the Convention.

General practice is that monitoring takes place on an *ad hoc* basis, when there is a crisis. The Centre reacts to information from diverse sources, such as NGOs, States and individuals. Crises may be of various kinds, e.g., poaching in wildlife parks, military action, civil disorder, industrial development, logging, or natural disasters. A crisis may be serious or extremely serious. When the situation is extremely serious, experts from the World Heritage Centre are sent to investigate, if the States parties so request. One or two missions of this kind are undertaken every year. For example, the USA recently requested a mission to the Everglades. When the situation is serious, a report is produced by technical experts, usually those belonging to the World Conservation Union (IUCN) or to the International Council on Monuments and Sites (ICOMOS) network in the field. In both cases, the situation is verified with the State party. Replies by the States parties differ in accuracy.

The World Heritage Centre and the IUCN present reports to the World Heritage Committee. To date, 50 reports were the result of missions and 100 reports have been produced by local IUCN representatives.

In serious situations, several solutions are available, such as technical assistance (professionals, money or equipment training), and emergency relief, all funded by the World Heritage Fund with a budget of \$3,000,000 a year. The Fund also supports promotion of the Convention and training. The World Heritage Centre hopes to increase the Fund's budget five or ten fold with the help of professional fund raisers.

Another solution for a serious situation is to put a site on the List of World Heritage in Danger. At the moment there are 6 natural sites and 10 cultural sites on this list. There are 20 sites that were on the list and that have been taken off it, because the situation had improved.

The UNESCO World Heritage Centre has a staff of 22 people, of whom 10 are professionals and 12 provide support and promotion. The World Heritage Committee comprises 21 States elected by the 138 States parties to the Convention for a six-year period; every two years, one third of the States are replaced or re-elected. Once every two years there is a Conference of States parties, which reports to the General Conference of the UNESCO.

The World Heritage Centre organizes the sessions of the World Heritage Committee and of the States parties; it facilitates communications on the Convention among the States parties; it receives nominations for the World Heritage List, and sends them on to the NGOs who make the actual technical evaluation.

The World Heritage Committee meets once a year in December, while the Bureau, five members of this Committee, meet for 6 days in Paris in between Committee sessions and for two days before each meeting. Committee members are not funded, since they are State representatives, unless they come from a developing country, when the World Heritage Fund can grant them a daily subsistence allowance.

Under Article 29 of the Convention, the States parties and the Committee must submit reports to the General Conference regarding the measures they have taken and the experience they have gathered. Systematic reporting is something that has not been practised for over ten years, but recently steps have been undertaken to revive the procedure. Three kinds of monitoring are envisaged:

- (1) a self-evaluating report produced every 4 to 5 years by the State parties, with the help of outside observers;
- (2) a reactive monitoring procedure like the *ad hoc* system currently functioning; and
- (3) an administrative reporting procedure that keeps track of the follow-up given to decisions by the Committee.

## 5.4 Conclusion

The 1954 Convention and the 1970 Convention reporting systems are, for various reasons, to a large extent inactive. The 1972 Convention can be considered a success, with more and more sites placed under its protective provisions.

but its reporting procedure does not function adequately either, due to lack of attention, of personnel and of funding.

## CHAPTER 6

### THE WORLD INTELLECTUAL PROPERTY ORGANIZATION

The purpose of the WIPO is the promotion of respect for and the protection and use of intellectual property through cooperation among States. Its main activities consist in establishing international norms and standards in the field of intellectual property, especially through international treaties or model laws; administering treaties that embody such norms and standards, also treaties that facilitate the filing of applications for the protection of inventions, trademarks and industrial designs; and providing information on industrial property, especially the legal-technical information contained in patent documents and in the International Register of Trademarks. The WIPO also carries out a substantial programme of legal and technical assistance to developing countries and countries in transition to a market economy.

The most important WIPO treaties are the Paris Convention for the Protection of Industrial Property (1883) and the Bern Convention for the Protection of Literary and Artistic Works (1971) (Paris and Bern Conventions). For a State to become a party to one of the Conventions, its national laws on the protection of industrial property (Paris) or on copyrights (Bern) must comply, largely, with the said Conventions. The incentive for States to become party is the fact that their national rights are protected in all countries party to this Convention. There are 106 States party to the Bern Convention and 120 States party to the Paris Convention, while 147 States are members of the WIPO.

A State sends a draft law to the International Bureau of the WIPO, which makes comments and recommendations on the compatibility of the law with the Convention. The State then revises the draft until the law is compatible and the State can become party to the Convention. In the Copyright Department, some 10 professionals and 3 or 4 secretaries and, in the Industrial Propcrty Division, some 15 professionals and 6 or 7 secretaries deal with draft laws. Revised drafts may be produced by the States or by the WIPO, and revision may be done in the WIPO office in Geneva or by missions sent to States.

There are two other means of implecmting the Conventions. Every two years a circular letter is sent to Member States, with a request for information on new laws. Approximately 60% of the States respond to these requests.<sup>33</sup> It

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<sup>33</sup> From an interview with Mr Eckstein, WIPO Geneva.

is also possible that a State already party to a Convention wishes to change obsolete laws and asks the WIPO for advice.

The WIPO has an extensive mechanism for helping States, at their request, to implement the intellectual property Conventions they have signed. The laws have to be constantly updated, because the Conventions change regularly. This aspect of the work of the WIPO is the responsibility of the Development Co-operation Department, which assists in setting standards and in changing laws and institutions in countries. It has regional bureaus in Geneva (for Africa, Asia and Eastern Europe, for example), which have already provided much legal advice to developing countries and are now concentrating on the former socialist countries in Central and Eastern Europe.

The WIPO works with sponsored NGOs. ATRIP (Association for Teaching and Research of Intellectual Property) is an NGO that organizes lectures, meetings and fora. Close contact is also kept with universities.

The WIPO has no complaints procedure. This is one of the reasons for US criticism of the WIPO. Some of the WIPO mandates appear likely to be transferred to the new World Trade Organization (WTO), and some WIPO operations will then be terminated. The GATT (General Agreement on Tariffs and Trade), the predecessor to the WTO, has an enforcement system, the Treaty on the Settlement of Disputes: this works with panels of independent experts who make a report on a given situation; a follow-up report, describing how the State reacts to the first report, is sent to the Assembly. The WIPO has a similar system ready in draft form.

Most of the work of the WIPO consists in registration of trademarks under the industrial-property Conventions, work to which 67% of the staff and thus of the staff budget are allocated. Under the internal budget, the WIPO is spending Sfr. 1,915,000 in 1994 on setting standards and procedures for the protection and enforcement of intellectual property rights. Probably the real cost is higher, since the budget is subdivided into various activities that might turn out, on closer study, to be related to implementation.

The WIPO charges fees for helping industries to protect their trademarks under the national laws of countries. Although these fees are sufficient to cover WIPO expenditure Member States have insisted that they wish to continue to pay contributions, in order to be able to exert control over the organization. The Patent Cooperation Treaty Section is the department that helps industries to protect their patents in foreign countries; it is paid by these industries for its services. The WIPO consistently balances its budget.

*(To be continued)*

*BEFORE "GENEVA" LAW*

A British surgeon in the Crimean War\*

by Hilaire McCoubrey

It is well known that modern "Geneva" international humanitarian law has its origins in the impartial rescue and relief work undertaken by Henry Dunant in June 1859 for the wounded soldiers abandoned on the battlefield at Solferino and the proposals made thereafter in his book "A Memory of Solferino". Henry Dunant's initiative led to the establishment of the International Red Cross Movement and the conclusion of the initial Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armies in the Field, signed in 1864. These humanitarian developments were, by 1859, sorely needed. The first half of the nineteenth century had seen an increase in the scale of warfare and with it a combination of incapacity and unconcern in relation to the wounded and war victims in general. Hence the scenes which so horrified Dunant as he crossed the battlefield at Solferino. The world for which Henry Dunant addressed his important work was becoming aware of the shortcomings in the treatment of the wounded and sick in armed conflict, and the shocking revelations of the Crimean War some four years earlier had played a significant part in prompting this new concern.

The official medical services in the Crimean War were not only inadequate in extent but also enmeshed in bureaucratic inefficiency and inertia, with appalling human consequences. Such efforts as were made for improvement were undertaken mainly by private persons and charitable bodies, often in the face of official hostility and obstruction. The

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\* This article is based upon documents held in the Wrench Collection in the University of Nottingham Library Department of Manuscripts. The assistance of the staff of the Department is gratefully acknowledged.

work of Florence Nightingale at the British hospital in Scutari, in particular, is seen as a major step in the development of modern nursing. Other important work included that undertaken with the French forces by the Order of St. Vincent de Paul and with the Russian army in Sevastopol by the nursing Sisters of the Order of the Exaltation of the Holy Cross.

The papers of a British military surgeon, Edward Mason Wrench, offer a valuable insight into the conditions in which the military medical services worked on the battlefields of the Crimea. These documents reveal a somewhat more complex picture than that suggested by a straightforward comparison drawn between callous official indifference and private humanitarian endeavour. The image which emerges from the Wrench papers is rather that of a conscientious surgeon well aware of the shortcomings of his service but frustrated by bureaucratic incompetence and obscurantism. These were the obstacles, which in the mid-19th century so urgently needed to be addressed, which represented a challenge for people such as Florence Nightingale and which ultimately prompted the saving initiative of Henry Dunant.

## **Edward Mason Wrench, FRCS (1833-1912)**

Edward Mason Wrench was born in Nottingham on 1 July 1833, the son of a clergyman. He received an education normal for his time and situation and underwent medical training at St. Thomas's Hospital in London. In November 1853, at the age of 20, he joined the Army Medical Service and was posted to the Crimea. Upon arrival he was put in charge of a section of the British Military Hospital located in the buildings of the Russian Military Academy in Balaclava, which was receiving wounded from the battle of Inkerman. From Wrench's account this building was far from ideal for hospital use and had anyway been severely damaged by a "hurricane" which had blown out all the windows shortly before his arrival. Subsequently, in December 1854, he was appointed Assistant Surgeon to the 34th Regiment of foot and served with them in the trenches before Redan until the fall of Sevastopol in September 1855. Subsequently Wrench served with the 12th Lancers during the "Indian Mutiny". He retired into civilian medical practice in 1862 but became a member of the volunteer reserve forces, attaining the rank of Surgeon Lieutenant Colonel with the Sherwood Foresters. He was elected President of the Midlands Branch of the British Medical Association in 1899 and died in 1912.

## Military medical facilities in the Crimean War

Wrench's first posting to the base hospital at Balaclava seems to have been marked by the same horrors which so appalled Florence Nightingale at Scutari. Forty-four years later, in his address to the Midlands Branch of the British Medical Association, he wrote:

"I had charge of from 20 to 30 patients, wounded from Inkerman, mixed with cases of cholera, dysentery, and fever. There were no beds... or proper bedding. The patients lay in their clothes on the floor, which from rain blown in through the open (i.e. broken and unrepaired) windows, and the traffic to and from the open-air latrines, was as muddy as a country road".<sup>1</sup>

In a letter written to his parents on 22 November 1854 Wrench had emphasized the difficulties involved in medical practice in such circumstances. He wrote:

"I saw Henry Ludlow today, he was disgusted with everything and wants to go back to Scutari, he has had the care of the Russian wounded... (T)hey had 130 last week, but they have all died but 60, our wounded are pretty well for out here but (much) ... worse than the worst sick in any hospital in England. We have got no opium (for pain relief), ... arrow root, tea and many other things. Which of course does not facilitate the treatment".<sup>2</sup>

This reflects a situation which was appalling even by the standards of 1854 and strikingly reminiscent of that described by Henry Dunant in Castiglione after Solferino:

"Wounds were infected by the heat and dust, by shortage of water and lack of proper care, and grew more and more painful. Foul exhalations contaminated the air, in spite of the praiseworthy attempts of the authorities to keep hospital areas in a sanitary condition".<sup>3</sup>

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<sup>1</sup> E.M. Wrench, "The lessons of the Crimean War", offprint from the *British Medical Journal*, 22 July 1899, p. 1.

<sup>2</sup> Original letter preserved in the Wrench Collection at the Department of Manuscripts and Special Collections, University of Nottingham Library.

<sup>3</sup> Henry Dunant, "A Memory of Solferino", 1862, published in English translation by the American National Red Cross, 1959, p. 31.

Wrench remarks that the "modern" concept of medical sanitation hardly existed at the time of the Crimean War, but even in its absence the conditions in which patients were kept can hardly have been considered conducive to their recovery.

If the physical surroundings were deplorable, the medical resources were hardly better. Wrench wrote:

"We were practically without medicines, the supply landed at the commencement of the campaign was exhausted, and the reserve had gone to the bottom of the sea in the wreck of ... the *Prince* so that in November 1854 even the base hospital at Balaclava was devoid of opium, quinine, ammonia, and indeed of all important drugs".<sup>4</sup>

The hospital which Wrench thus describes was, of course, primarily intended for the treatment of British casualties, notably, during his time there, from the battle of Inkerman. It may be assumed that Russian wounded would not have found any better conditions. It would certainly be unwise to apply the modern requirement contained in Article 1 of the First Geneva Convention of 1949, i.e.

"They (the protected wounded and sick) shall be treated humanely and cared for... They shall not be left without medical assistance and care, nor shall conditions exposing them to contagion or infection be created,"

retroactively to the 1850s, but any modern military medical unit run along the lines of the one in Balaclava described by Edward Wrench would manifestly be in violation of this provision. In modern terms, a rather more complex question arises in comparison with Article 10, para. 2, of 1977 Additional Protocol I. This requires that "in all circumstances" the wounded and sick

"shall be treated humanely and shall receive to the fullest extent practicable and with the least possible delay, the medical care and attention required by their condition".

The emphasis is added. The sinking of the medical supply ship *Prince* appears to have interrupted the intended supply of medicaments to the military medical facility and it might even now be possible to bring such a disaster within the limits of what is "practicable". Indeed, it is accepted that in applying the modern Geneva provision account must be taken of

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<sup>4</sup> *Ibid.*, p. 2.

the "material possibilities" of the time and place.<sup>5</sup> Although modern drug therapies are quite different from and much more effective than those available in 1854, the deficit at Balaclava was serious. They seem initially to have been the result of misfortune rather than neglect, but the efforts made to improve the situation appear to have been less than satisfactory. The material conditions in the hospital were, even by the generally poor contemporary hospital standards, medically indefensible, and would now be legally indefensible.

In field hospitals near the front line, conditions were even worse. On 13 June 1855 Wrench wrote to his family from the camp of the 34th Regiment before Sevastopol:

"Things are in an awful state up here now and the patients, poor fellows, suffer dreadfully. I have just been round my wards for the night and have two men which I don't expect to find alive in the morning, they are literally dying from exhaustion and we have nothing to give them. They are suffering from fever alike many more... and we have not got a drop of wine to give them although there is lots at Balaclava we have no means of getting it up. I managed to get some tea... and it was delightful to me how grateful the poor fellows were for it but I am sorry to say it is nearly all gone and I can get no more till I go down to Balaclava again, but which I hope to do on the first fine day".<sup>6</sup>

This letter speaks eloquently of the state of supplies to the hospital, and to the front line generally, not least by showing the dependence upon the "charitable" initiative of an individual surgeon.

If some allowance may be made for the drug supply deficit at Balaclava, the same is not true for some of the official directions with regard to treatment and especially to pain relief. Wrench remarked, also in his 1899 Presidential Address, that the Director General of the Armed Medical Services had all but banned the use of chloroform as an anaesthetic, then a recently discovered — and admittedly far from risk-free — technique. Nonetheless, in the context of "heroic" battlefield surgery, involving amputation of shattered limbs and so on, this can only

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<sup>5</sup> Y. Sandoz, C. Swinarski, B. Zimmermann (eds.), *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*, ICRC, Martinus Nijhoff, Geneva, 1987, referring to Article 10 of 1977 Additional Protocol I.

<sup>6</sup> Original letter preserved in the Wrench Collection at the Department of Manuscripts and Special Collections, University of Nottingham Library.

be seen as practically, if not indeed intentionally, cruel obscurantism. This was clearly Edward Wrench's view of the matter. The tone of outrage is obvious in his citation of the official view in the Crimea that:

"the cries of the patient undergoing an operation were satisfactory to the surgeon, as an indication that there was no fear of syncope and that the pain was a stimulant that aided recovery".<sup>7</sup>

This attitude was indeed significant, showing as it does the unconcern for the sufferings of the wounded which informed the views of a hide-bound bureaucracy. That Wrench in the field thought differently is also significant. In a letter dated 5 June 1855 and written to his brother, who was then in the course of medical training, Edward Wrench himself gave a detailed account of one of the patients under his care. This shows both Wrench's genuine concern for those under his care and the very hard lot of the disabled soldier in the mid-19th century. He stated:

"I have got a splendid case under my care just now, a man was hit in the arm 3 or 4 weeks ago, about 2 inches of the ulna was carried away and the bullet went clean through his arm... he was apparently doing well, when frightful arterial haemorrhage set in one day when I was out of camp. Our surgeon plugged the wound... and put a tourniquet on — this stopped it and for another week he did admirably. Then on Thursday last it bled again, I asked my (senior) surgeon's advice and he again recommended (the procedure adopted)... this stopped it but the wound had such an unhealthy... appearance the next morning that tying the artery was then out of the question and amputation was the only alternative. I therefore amputated his arm just above the elbow and he is now doing admirably. No arm is much better for a soldier than an arm of little use as for the first he gets a shilling a day pension (for the loss of a limb) whereas for the latter he gets nothing, but is just turned out as unfit for service, so that the old story of where in doubt operate, is doubly applicable in the army".<sup>8</sup>

The problems described here of postoperative infection in an era in which antisepsis was little known and of the limited provision made for many of the disabled are commonplace in writings of the Napoleonic Wars.<sup>9</sup> Little had changed in the forty years between 1815 and 1855.

<sup>7</sup> E.M. Wrench, *op.cit.*, p. 8.

<sup>8</sup> Wrench Collection, University of Nottingham Library.

<sup>9</sup> The account of a Russian field hospital in 1812, during the Napoleonic Wars, given by Leo Tolstoy in his novel "War and Peace", Book X. Ch. xxxvii, emphasizes the unavoidable horror of battlefield surgery in that era.

A rather different question arises in relation to the exposure of military medical facilities to avoidable perils of conflict. A striking instance is found in Wrench's account in his 1856 Diary of an explosion in the British lines before Sevastopol in December 1855. It would seem that this was an explosion of powder in an ammunition dump rather than a result of enemy bombardment. It was nonetheless catastrophic in its effects. Wrench reported:

"I went to the scene of the explosion... the broken huts had suffered like my house<sup>10</sup> with the roofs being lifted and crushing down the walls (if they were not blown out) when they came down again. I saw a hospital roof resting on the beds...".<sup>11</sup>

Accidental explosions of ammunition have not been unknown in much later conflicts than the Crimean War. The striking aspect of the incident described by Wrench is, however, the apparent location of a field hospital in the immediate vicinity of an ammunition dump. This location was on general grounds unwise in view of the possibility, and in the case in point the reality, of accident. The danger in the event of enemy attack is also obvious; this is what Article 19 of the First Geneva Convention of 1949 has in mind in stipulating:

"The responsible authorities shall ensure that... medical establishments and units are, as far as possible, situated in such a manner that attacks against military objectives cannot imperil their safety".

In modern law, an ammunition dump is clearly in itself a military objective. The collapse of military medical services during the first half of the 19th century, roughly from the French Revolutionary and Napoleonic Wars to the Franco-Austrian War, is well illustrated by the horrors experienced by Edward Wrench in the base hospital at Balaclava. This, as underlined by Wrench's comment about anaesthesia, is all the more striking in the light of the very significant medical advances which took place during the same period. It is, however, evident that many people, certainly military surgeons such as Edward Wrench, were well aware of the defects of the system in which they worked. This point is one which Wrench himself emphasized. The notion of an organization which was both incompetent and uncaring is also suggested by the loca-

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<sup>10</sup> This seems to have been a large hut built by Wrench himself. The Diary includes a drawing of this structure as a substantial one- or two-room dwelling.

<sup>11</sup> Undated entry in Wrench's summary of events at the beginning of his Diary for 1856.

tion of a hospital next to an ammunition dump. Many of these issues were to be addressed by the original Geneva Convention of 1864 and are certainly now exhaustively covered by the instruments of 1949 and 1977.

## Rescue and enemy wounded: the “Solferino” problems

The state of medical facilities and the type of treatment given, vital as these considerations are, matter little if the wounded are never brought in. This is an important consideration for all the wounded and sick but is an especially sensitive issue in relation to endeavours to rescue and treat enemy wounded. It is clear from Henry Dunant’s account of the aftermath of Solferino in 1859 that the essential problem was less one of callous abandonment, even of enemy wounded than one of incapacity and of pitifully limited resources being overwhelmed by vast numbers. Dunant wrote:

“On the Saturday the number of convoys of wounded increased to such proportions that the local authorities, the townspeople, and the troops left in Castiglione, were absolutely incapable of dealing with all the suffering”.<sup>12</sup>

It was to alleviate this appalling suffering that Henry Dunant organized his corps of volunteers to engage in both treatment and rescue. A similar crisis to that which Dunant described after Solferino existed also in the Crimea. The inadequacy of the official hospital services has already been described, but rescue work was also beset by difficulties. In his 1899 Presidential Address to the Midlands Branch of the British Medical Association, Edward Wrench gave a harrowing account of the transport of the wounded by mule train over rough tracks down to Balaclava harbour to await conveyance by ship to Scutari.

“The wretched patients (were) jolted and tossed about by the mules on the mountain paths, the short road to Balaclava... being then considered unsafe. Several mules fell, and one poor soldier recovering from a bullet through his chest was thrown out and crimsoned the snow from his re-opened wound”.<sup>13</sup>

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<sup>12</sup> Henry Dunant, *op.cit.*, (note 3), p. 30.

<sup>13</sup> E.M. Wrench, *op.cit.*, (note 3), p. 6.

Wrench added that all the men in this convoy reached Balaclava alive but were still left to lie for many hours on the wharf at Balaclava because there were no ships to transport them. It would seem that no local truces with a view to retrieval of the wounded, such as are now urged by the First Geneva Convention, Article 15, were considered, although for other purposes brief truces were arranged. Wrench notes in his summary of events for 1855 that a brief truce was arranged between the Sevastopol garrison and the besieging forces and indeed that friendly fraternization between British and Russian officers took place on this occasion. The comparison with the Christmas Day cease-fire on the western front in 1914 during the First World War is compelling. So far as collection of the wounded was concerned, it would seem that in general organizational inadequacy again defeated good intentions.

Wrench also reveals in his papers that at least some effort was made to care for enemy wounded. Reference has been made above to the provision made for the enemy wounded at Balaclava. In his Diary for 1855 Wrench refers to an incident on 22 March during the siege of Sevastopol.

"The Russians made a sortie .... In the following morning a wounded Russian ... was brought into our hospital and we amputated his leg, he did well and was eventually discharged...".<sup>14</sup>

Again during the siege he wrote to his family on 7 July 1855 describing an encounter with a dying Russian soldier.

"(During a night action) I was sitting on a stone when I heard a groan near me, and upon looking I found a poor Russian boy wounded in the side, I lit a candle and looked at him but found I could do nothing to (i.e. for) him so I gave him some water... and laid his head on a flat stone, but upon looking at him again I found him dead".<sup>15</sup>

It is difficult to say how much effort was put into rescuing enemy wounded, but clearly some attempt was made. The situation had, however, manifestly improved since the siege of Messina in 1848, only five years before the outbreak of the Crimean War, when Dr. Palasciano had been imprisoned, and only just escaped execution, for treating wounded enemy soldiers.<sup>16</sup> Elsewhere in the Wrench papers an indication is given of the

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<sup>14</sup> E.M. Wrench, *Diary for 1855*, summary of events referring to 22 March 1855.

<sup>15</sup> Wrench Collection, University of Nottingham Library.

<sup>16</sup> Jean Pictet, *Development and principles of international humanitarian law*, Martinus Nijhoff, 1985, p. 25.

effects of inadequate provision for collection of the wounded, together with the absence of effective humanitarian, and sanitary, provision for the dead. It is clear that little or no allowance was made for the collection and burial of the dead. In a letter written on 10 February 1855 from the camp before Sevastopol, Wrench said:

“The dead Russians have been lying in the part I went to today till quite lately as the Russians fired on us if we went in any numbers to bury them”.<sup>17</sup>

Long after the Crimean War, in an undated 1905 cutting from the *Daily Mail* newspaper, correspondence received by the paper from Wrench is cited in relation to the discovery of the body of a Miss Hickson and its state of preservation. The newspaper reported:

“Mr. E.M. Wrench FRCS, referring to the preservation of the hands while the neck was gnawed, states that he saw dead Russians on the field of Inkerman with the crocuses blooming between their mummified fingers after the fleshy parts of the body had been devoured by birds and beasts.”

Such a condition would not have been reached immediately and one is left to wonder both whether they had suffered instant death on the battlefield and what the condition of the battlefield had been in the intervening period.

## What was wrong with medical services in the Crimean War?

The papers of Edward Mason Wrench indicate, as was suggested at the outset, a rather more complex situation in mid-19th century military medical services before the pioneering work of Henry Dunant than is sometimes assumed. The state of official medical services and, most particularly, of the medical supply system stands unequivocally condemned in Wrench's writings. At the same time it is clear that he and other medical staff working at or near the front line were well aware of the defects and eager for improvement. A particularly interesting light is cast upon this by the attitude taken by Wrench, as a military surgeon, to the

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<sup>17</sup> Wrench Collection, University of Nottingham Library.

work of Florence Nightingale. In a letter written on 14 May 1855 from the camp before Sevastopol, Wrench wrote to his family:

"Poor Miss Nightingale was landed today at 4 o'clock and carried up to the convalescent hospital at Balaclava on a stretcher, she has got fever. I hope she will get better, she has been the saving of many lives herself — I am disgusted with anyone speaking ill of her... they little know what she has gone through. The big surgeons may call her interfering, but the adjutants stick up for her and as they were the men who did all the work at Scutari they ought to know best".<sup>18</sup>

The implicit contrast shown by this letter between bureaucratic obscurantism and the view of those in the front line is highly significant. The ultimate conclusion reached by Edward Wrench upon the failures of the official military medical services in the Crimean War put the essential point clearly. In 1899, looking back upon the lessons of the war, he wrote,

"(I)t was the system and not the men that failed. The medical department was, like every other in the army of that date, quite unprepared for a great and prolonged war, hampered by red tape and denied all independence of action... The Crimean campaign taught a lesson I trust will never be forgotten... that unless the medical department of the army is made efficient and supplied with its proper complement of officers and ambulances during peace, it cannot be expected to do its duty efficiently during war".<sup>19</sup>

These needs were in part matters for post-Crimean reforms of military organization, but were also in large part those that Henry Dunant was to address with such effect after his experience at Solferino.

In the context of the background to modern development of international humanitarian law, the papers of Edward Mason Wrench have considerable significance. They confirm the image of an age which had reached a nadir in, amongst other matters, humanitarian provision for the wounded and sick in armed conflict, but also one which at some levels was aware of and concerned about that fact. The profoundly important proposals made by Henry Dunant in "A Memory of Solferino" found a receptive audience, and the developing climate of opinion which Dunant encouraged and led in order to prompt positive action can be seen very

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<sup>18</sup> *Ibid.*

<sup>19</sup> E.M. Wrench, *op. cit.*, (note 1), p. 8.

clearly in the writings of the young English military surgeon in the Crimea. Edward Mason Wrench cannot be called a "precursor" in the development of international humanitarian law, but the attitudes which he represented were an important part of the background to the emergence of that law and practice.

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*HUMANITARIAN POLICY AND OPERATIONAL ACTIVITIES*

**STRENGTHENING THE COORDINATION OF  
EMERGENCY HUMANITARIAN ASSISTANCE**

*Address by Mr. Cornelio Sommaruga*

*- President of the ICRC at the  
United Nations General Assembly*

*— 49th session —*

*(23 November 1994)*

The year 1994 will be remembered as one of unspeakable suffering, during which entire populations were threatened, starved, terrorized, massacred and forced into senseless exile. It will also be remembered for having revealed the full extent to which the massive trade in conventional weapons of all kinds and their indiscriminate and unscrupulous use were responsible for this widespread suffering.

While the events in Rwanda certainly provide the most striking illustration of this situation, other conflicts such as those in Liberia, Angola, Bosnia-Herzegovina, Afghanistan and Sri Lanka, to mention but a few, must not be forgotten. Today, more than ever before, the International Committee of the Red Cross is involved in all aspects of emergency humanitarian protection and assistance. Allow me therefore to take this opportunity to share with you some thoughts based on the day-to-day experience of our delegates.

**The strengthening of humanitarian coordination and  
the role of the ICRC**

What can be said at present about the process of strengthening the coordination of humanitarian assistance? First of all, this process remains indispensable, especially in view of the magnitude of existing needs and the growing number of humanitarian players.

There has been undeniable progress in terms of openness and exchange of information. While this is a welcome first step it should not give rise to complacency, for compiling information does not in itself make for better coordination.

Fortunately, emergency situations often trigger common-sense reflexes which naturally lead, especially in the field, to tangible and complementary efforts to avoid wasting energy.

However, much still remains to be done before true coordination can be said to have taken the place of cohabitation, and this will be a lengthy process if excessive centralization and bureaucracy are to be avoided. Simply adopting a resolution will not solve the problems overnight.

Competition among various agencies and organizations, the tendency of certain States to engage in undisciplined bilateral action, the lack of professionalism shown by some new NGOs — whose good will is not in doubt — all these constitute obstacles that must be overcome.

Above all, better coordination should allow more efficient planning of humanitarian action in terms of time and place. The concentration of humanitarian agencies in a few theaters of operation, while other situations are neglected, and their simultaneous withdrawal without any provision having been made for the transition to development programs are so many examples of poor coordination and unsatisfactory planning. Yet it is totally unacceptable that the victims should be forgotten or abandoned!

The International Committee of the Red Cross, working as it does in constantly evolving conflict situations, is open to the idea of coordination but intent on preserving its independence, which it considers highly constructive. While it firmly believes in openness, combined with tangible and flexible cooperation adapted day by day to conditions in the field, it takes its decisions independently — and is financed independently — so as to preserve, in all circumstances, its treaty-based role as a neutral humanitarian intermediary and also to maintain the speed and effectiveness of its operational activities. This independence is a fundamental working asset which it places at the service of all victims, while adopting a spirit of complementarity and solidarity in regard to the sharing of responsibilities with its humanitarian partners in the field.

## **The fundamental value of humanitarian work**

Our discussion here, which centers on our humanitarian responsibilities, gives me an opportunity to share with you my concern about the

frequent use of the term "humanitarian" in a sense too far removed from its original meaning, which is closely tied to the prevention and alleviation of suffering.

The pressure exerted on governments by the media has created a political demand for high-profile action. Such action can lead governments to lose sight of broader needs and to avoid or postpone necessary political or even military decisions. Yet humanitarian action is no substitute for these decisions.

This prompts me once again to call for a clearer definition of the respective aims and mandates of all the players on the international scene.

## **The relationship between humanitarian and military action**

Recent experience, especially in Bosnia-Herzegovina and Somalia, has enabled us to gain a deeper understanding of the relationship between humanitarian and military action. While military or police intervention may prove necessary for the deployment of humanitarian operations, the two forms of activity should on no account be confused. Specific aims promote greater efficiency. Indeed, the parties to a conflict must be able to perceive the neutral and impartial character of humanitarian action if it is to be accepted. Wherever this is not the case, victims suffer all the more and humanitarian workers run a high risk of being taken as targets, in particular when a peace-keeping mandate is being replaced by a mandate to impose law and order. This is why I firmly advocate a clear distinction between military and humanitarian action, without, however, ruling out the possibility of continuous dialogue to ensure harmonious complementarity.

## **The relationship between humanitarian action and justice**

The setting up of international tribunals to try those accused of massive violations of international humanitarian law and of human rights law committed in the former Yugoslavia and in Rwanda has raised hopes for an end to the reign of impunity. The ICRC fully supports the establishment of an international criminal tribunal. Justice is a crucial factor in restoring confidence among the population of a divided nation and hence in enabling displaced people and refugees to return to their homes.

It is complementary to, yet distinct from humanitarian action. It is not up to humanitarian agencies to act as judges, and even less as prosecutors, as this would make it impossible for them to gain access to the victims. The situation in Rwanda today, where the work of observers sent by the High Commissioner for Human Rights constitutes one step in the judicial process, will serve as a testing ground for this complementarity.

## **Relationship between humanitarian work and political action**

No crisis can be solved without political action. Without it emergency humanitarian aid can do no more than temporarily alleviate the acute symptoms of an endemic, if not incurable, disease.

Is it not obvious that the breakdown of State structures, massive violations of humanitarian law and human rights by governments or factions, and in some cases the complete disappearance of the very principle of humanity, are caused by lack of attention and action on the part of the international community in finding solutions either before or at the outset of an emergency situation?

The humanitarian agencies expect political leaders, States, the United Nations and regional organizations to make their task easier, without actually doing the work that has been entrusted to them. Urgent attention needs to be given to situations that are reaching deadlock while continuing to cause dreadful suffering — as in Afghanistan, Liberia and Somalia, for example.

I am convinced that all the humanitarian agencies wish to join me in inviting political leaders to take greater account of humanitarian criteria when taking decisions to impose economic and financial sanctions. Perhaps we should give special thought here to the grave effects on public health when water purification and pumping installations are paralyzed. Is it not incongruous to impose debilitating sanctions with one hand while with the other bringing in humanitarian aid to restore supplies vital to the population's survival?

In this connection I should like to emphasize the ICRC's profound concern about the disastrous consequences for the population, and children in particular, when water supply systems are damaged, contaminated or even destroyed. This is an increasingly widespread phenomenon and a growing cause for concern in today's armed conflicts.

## Relationship between humanitarian action and development

The humanitarian agencies cannot hope to achieve optimum efficiency solely by clarifying their respective mandates. They must also carefully orchestrate the conduct of different types of activity over time. This, I believe, is one of the greatest challenges facing us in a rapidly changing environment.

The sole purpose of emergency humanitarian action is to save lives. Emergency operations should not last longer than is absolutely necessary and should include rehabilitation work. With this goal in mind the ICRC frequently gives conflict victims the means they need to make their own way back to self-sufficiency, by providing them with agricultural tools, fishing tackle, seed and veterinary assistance.

The continuum of emergency action, rehabilitation and development requires flawless management, the more so since responsibility for such work lies with different organizations with different mandates and different budgets. That is why proper planning over time is so important, both from the conceptual and decision-making standpoints and in terms of human, material and financial resources. All these efforts are indispensable for building peace.

## Respect for international humanitarian law

As President of the International Committee of the Red Cross I could hardly conclude this statement without restating the basic postulate that international humanitarian law must be respected in all circumstances. In its Declaration of 1 September 1993, the International Conference for the Protection of War Victims reaffirmed the need to make the implementation of international humanitarian law more effective. An open-ended intergovernmental group of experts responsible for seeking practical means of promoting full respect for this law and the application of its rules is due to meet in Geneva from 23 January 1995. The group will submit a report to the States and to the next International Conference of the Red Cross and Red Crescent, which will be held in Geneva in December 1995. This Conference is the only forum that provides an opportunity for dialogue between the National Red Cross and Red Crescent Societies, their International Federation, the ICRC and the 185 States party to the Geneva Conventions. Ensuring that practical steps are taken to fulfil the obligation

to respect and ensure respect for humanitarian law is an absolute priority and will be the principal goal of the Geneva Conference. This gathering will leave no room for political debate and will provide an excellent opportunity to find answers to purely humanitarian problems, which bring us face to face with our ethical responsibilities. I hope that the debate will be both serene and constructive; indeed, I feel that this is more necessary than ever if the international community is to succeed in taking effective action to relieve the unspeakable suffering endured by countless people worldwide.

The challenge that lies before us all is to humanize political action rather than politicize humanitarian endeavour.

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# Emergency coordination: a problem of humanitarian agencies or rather of politicians and generals?\*

by Peter Fuchs

The problem of coordination in humanitarian emergencies arising from conflicts is not a new subject. So many seminars, round tables, declarations and publications have tackled it. Most came to the logical conclusion that stronger coordination between the humanitarian agencies was necessary, that the money had to be spent in the most effective way, and that new coordination bodies had to be created to make sure that there was no waste of operational energy.

It makes sense of course to pursue and intensify these efforts. The end of the Cold War raised hopes for a more peaceful world and in the new climate of international relations tension between governments has indeed eased in several areas of conflict, but conflict has flared up in other parts of the world and again in former theatres of the Cold War. Manifold types of violent confrontations are today claiming a growing number of victims. These phenomena, which are an obvious threat to international peace and stability, plus the rapidly growing number of non-governmental organizations and the increasingly operational nature of the large international agencies, all call for tighter cooperation and stricter coordination.

The creation of cooperation mechanisms such as the meetings of the Inter-Agency Standing Committee and its working groups, in which the ICRC takes an active part, or the Department for Humanitarian Affairs (DHA) within the UN system, or ECHO within the EU, offers new possibilities to discuss coordination.

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\* Article based on an address delivered at the Royal Institute of International Affairs, Chatham House, London, 15 November 1994.

In addition, there is an increased awareness of the need for coordination among humanitarian agencies at field and headquarters levels. The ICRC not only consults regularly with operational UN bodies such as UNHCR, but also with the National Red Cross and Red Crescent Societies and their Federation and with major NGOs. There is a permanent exchange of information and plans of action are widely discussed. Parts of programmes are handed over to other competent operational organizations. Humanitarian workers in the field work hand in hand.

Usually, the ICRC is the first organization on the spot because of its permanent presence in regions where tension prevails. If a conflict breaks out, the ICRC immediately strengthens its presence, intensifies the gathering of information, evaluates humanitarian emergency needs and launches its activities to protect and assist civilians, prisoners and the wounded. The ICRC shares information with the governments and the various humanitarian organizations that might step in, especially the International Red Cross and Red Crescent Movement and the UN agencies.

This constructive form of cooperation certainly deserves to be pursued and developed. It makes it possible to avoid duplication of effort or failure to respond, thanks to a distribution of tasks in accordance with the respective mandates of the different organizations concerned. But despite these efforts, some problems remain.

Only too often, following constructive discussions leading to the distribution of urgent tasks, the ICRC, together with certain non-governmental organizations whose courage I should like to commend, finds itself alone out in the field for long periods of time or, worse, it is left on its own when the UN and NGOs decide to withdraw.

Another problem is the pressure which is put on NGOs to act as instruments of donor policy, to concentrate on activities which are rewarded by a high national media profile and provide perfect visibility, thereby enhancing fund-raising possibilities and leaving for others less appealing and less visible tasks such as emergency rehabilitation and coping with the medium-term consequences of war.

While it is encouraging to see that humanitarian issues are higher on the agenda of the international community today, the trend towards "politicization" of humanitarian work does not favour respect for international humanitarian law. A more precise division of tasks and responsibilities is therefore essential between the humanitarian organizations that

are working to alleviate suffering and the political bodies whose duty it is to tackle the causes of conflict and to restore conditions for peace and stability, *inter alia* by military means.

Finally, beyond purely operational coordination, the humanitarian agencies, which are well placed to observe the consequences of war, should join forces to promote respect for international humanitarian law and act in a way which enhances it. The "code of conduct" promoted by the ICRC and the International Federation of Red Cross and Red Crescent Societies and adopted by some of the major NGOs is an important step in this direction.

Thanks to all these coordination efforts, considerable progress has been achieved in the field of operational coordination between the various humanitarian agencies. The existing mechanisms should be sufficient to overcome the remaining problems.

What worries me more today is the indiscriminate use of the word "humanitarian", which is creating new problems of coordination. Much of today's international response to a conflict is labelled "humanitarian". There is a purely military intervention dubbed "humanitarian", there are army units which are deployed for purely "humanitarian" work in a conflict region without participating in peace-keeping efforts; a "humanitarian group" should supervise the implementation of an embargo on a border. To me, this indiscriminate use of the word "humanitarian" seems to be an indication of increasing uncertainty as to the different roles and responsibilities within the international community, and this leads me to the fundamental question of whether the real problem of emergency coordination is still a problem of the humanitarian agencies or rather a problem of politicians and generals.

It is true that the changing environment of conflicts has become much more complex. The new conflicts often have little to do with the classic international or civil wars of the Cold War period, where a clearly defined number of parties were involved and a certain chain of command, both political and military, existed on each side. The new phenomena encountered today — the destruction of any social fabric, the complete disappearance of any form of authority except for that of guns, the denial of basic values and the increasing chaos and anarchy — are making conflicts more complex, the suffering of civilians ever more cruel, and humanitarian workers and the international community more helpless. Instead of having to deal with generally two parties to the conflict, each with its own strategic Cold War patron in the background, the ICRC today often has to negotiate with groups, clans, bandits, militias and weekend fighters.

The international regulating mechanisms are not yet adapted to these new situations.

The disappearance of the direct or indirect influence brought into play by the superpowers during the bipolarity of the Cold War leaves humanitarian agencies, but also politicians and generals, often without clear points of reference. And it seems to be difficult, sometimes even impossible, for governments to reach a realistic consensus on political and military options and actions. Even though UN resolutions are no longer blocked by the veto mechanisms so often applied during the Cold War, they are often not realistic and reflect a verbal consensus rather than a genuine readiness to intervene in a truly efficient manner.

In this increasing aimlessness, a result of the failure to reach a consensus on appropriate political or military reaction, humanitarian action provides a welcome focal point, a sense of purpose. This activism helps to decrease the pressure exerted on governments not only by the national and international media, but also by public opinion, which tend more and more to dictate today's agenda of political priorities and create a political need to act immediately. Since nobody contests the need for humanitarian aid, unlike political or military interventions, humanitarian action may serve "*ut aliquid fieri videatur*" — in order to give the impression that something is done.

But humanitarian action should be parallel to political or military action, not replace it. If humanitarian action is misused as an alternative instrument of politics, as an opportunistic extension of foreign policy, as a means of decreasing internal political pressure in one's own country, this same humanitarian action loses its "innocence", is no longer neutral and free of ulterior political motives. It will finally lose its very identity and even become a target for armed attacks.

As I said, army units are doing humanitarian work but refuse peace-keeping activities. Governments are stepping up their direct humanitarian activities through governmental operational bodies under their national flag. Humanitarian agencies are taking part in the so-called integrated approach.

This creates new coordination and identity problems during humanitarian emergencies.

Let us have a look at the integrated approach which is the guiding principle of the *Agenda for Peace*, that very stimulating and valid document by the United Nations Secretary-General, Mr. Boutros Boutros-Ghali. This *Agenda* advocates a comprehensive approach including political, military and humanitarian activities which seems to make sense

in complex emergencies such as today's conflicts. Creating synergies between the different possibilities for action could indeed enhance the efficiency of the international community without considerably increasing the resources which have to be invested.

This approach is certainly correct in situations of conflict prevention. Preventive diplomacy, economic support, development, humanitarian aid and the deployment of military observers can indeed stabilize a given situation. Greater means should be invested in such preventive efforts, which are in any case cheaper than all the investments which have to be made in order to contain a conflict which has broken out, not to mention reconstruction and rehabilitation.

The same synergies can be created in the post-conflict phase where consolidation of peace, reconstruction and, if needed, a bridging humanitarian action in favour of the most needy are required.

But I think that the plan set out in the *Agenda for Peace* cannot be applied without difficulty during the acute phase of a conflict. In such a situation, humanitarian work concentrates on the acute symptoms produced by the crisis and may not tackle political or military problems. There is a clear need for an independent, neutral and impartial approach without any ulterior political motives in order to reach all the victims of the conflict on all sides, and to do so with the agreement of all parties. In such a situation, often only really independent, neutral and impartial organizations such as the ICRC can reach those in need. The States were completely aware of this necessity when they drew up and signed the Geneva Conventions which stipulate this neutrality and impartiality of humanitarian assistance.

"Neutral and impartial" — in the meantime, most of the humanitarian agencies use these words to define their identity. But the important question is not whether an organization really is or declares itself to be neutral and impartial. What counts is how that organization is *perceived* by the various parties involved in the conflict. UN agencies such as UNHCR are certainly neutral and their action is impartial. But since they operate under the same blue emblem as the UN blue helmets, using the same white cars with the blue flag protected by white armoured vehicles with the blue emblem, they are not necessarily *perceived* as being independent and neutral. If UN troops are seen as enemies by one or another protagonist, all those who work under the same flag and emblem risk being equated with them and also regarded as enemies. This perception of dependence and partiality jeopardizes humanitarian work in general and the safety of all humanitarian field workers.

The same is true for the latest efforts of some governments sending armed army units into conflict zones to do purely humanitarian work. This blurring of responsibilities hampers coordination efforts considerably. Troops are made for peace-keeping and peace enforcement, that is what they are expert at. Humanitarian work needs a different kind of expertise and should be done by humanitarian organizations.

In order to prevent a further dangerous weakening of real humanitarian action, which must remain independent, neutral and impartial, it is even more important to combat the growing tendency to label any political and military intervention as "humanitarian".

There is, of course, an important place for political and military action in a humanitarian emergency, especially in the anarchic and chaotic new conflicts. It would be impossible, and probably even undesirable, to dissociate humanitarian endeavour completely from political action.

Humanitarian work concentrates on the acute symptoms produced by crisis, but the crises themselves cannot be resolved without political or even military measures to tackle their underlying causes.

In chaotic situations of total insecurity, humanitarian work may depend on the creation of an environment which allows the deployment of humanitarian operations. A humanitarian space must be established by deploying UN troops in an early phase of the conflict, replacing absent police authorities and ensuring a minimum of security for humanitarian organizations to fulfil their mandates. But in order to do this, the UN Secretary-General should have a rapid reaction force at his disposal. Are the States ready to coordinate their efforts to this effect?

Again, military action should be clearly separated from humanitarian action. In the former Yugoslavia and in Somalia, it has unfortunately proved necessary to use armed escorts to protect humanitarian convoys. This, however, must remain a temporary and exceptional measure, and we must take care not to start thinking of it as an acceptable long-term solution. If we resign ourselves to these means, are we not in fact giving up all hope of persuading the belligerents to respect not only humanitarian work but above all defenceless civilians and prisoners? We must also demand and restore respect for protective emblems, especially those of the red cross and red crescent, which are so often disregarded.

Moreover, a clear distinction must be drawn between jurisdiction and humanitarian action. Although the ICRC and other humanitarian organizations are ready to take considerable risks in order to bring the victims assistance and protection, their role is not to act as judge and even less

as prosecutor. Their having such tasks would be seen as very dangerous by the parties to the conflict, which would do anything to avoid the presence of witnesses and would not allow access to those in need. However, we should be more than happy if the governments were to fulfil that role. This would discourage further violations of international law and, alongside other measures, would facilitate the restoration of dialogue and lasting peace.

Is emergency coordination a question for humanitarian agencies or rather for politicians and generals?

I think the answer is less complex than the new complex emergency situations. The major humanitarian agencies have reached a promising level of consultation and coordination with quite good results in the field. But today I feel that it is urgent to go beyond humanitarian coordination, to enhance consultation and effective coordination in the political and military approach. The respective responsibilities of humanitarian agencies, politicians and generals must be defined more clearly and complied with, and the political and financial support for both activities must be strengthened. This could create new synergies and clear responsibilities without confusion. Both are desperately needed to resolve today's emergency situations with their devastating effects and inhuman consequences.

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# Between Insurrection and Government

## ICRC ACTION IN MEXICO

(January-August 1994)\*

by Béatrice Mégevand

### INTRODUCTION

On 1 January 1994, Mexico's awakening after New Year's Eve was rude to say the least, for that was the date chosen by a hitherto unknown guerrilla movement, the *Ejército Zapatista de Liberación Nacional* (Zapatista National Liberation Army)<sup>1</sup>, to launch a simultaneous attack on several municipalities in the south-eastern Mexican State of Chiapas, and particularly on its jewel, well known to tourists — San Cristóbal de Las Casas.

No analyst had foreseen this sudden outburst of indigenous fury, which for twelve days sent shock waves throughout the country. The toll taken by the brief conflict was heavy: according to official figures, over 150 people (mostly civilians) were killed, several dozen wounded and some 140 detained. Public opinion was traumatized, for despite its historical tradition of extreme violence, Mexico had lost the habit of war since the revolution of Pancho Villa and Emiliano Zapata.

In the space of a few days, reaction was organized against this new revolutionary outburst, inspired in its symbolism and content by that great Mexican revolutionary hero. Once the initial surprise had worn off, President Salinas de Gortari appointed a special representative — the *Comisionado para la Paz y la Reconciliación en Chiapas* (Commissioner for

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\* Original: French — September 1994.

<sup>1</sup> More commonly known as EZLN or just EZ, or as "los zapatistas".



⊕ ICRC mission    + ICRC presence

ICRC 1.95

Peace and Reconciliation in Chiapas), known as the *Comisionado* for short — to start talks with the guerrilleros as soon as possible; a mission to mediate between the government and the EZLN was organized under the aegis of Monsignor Samuel Ruiz García, Bishop of San Cristóbal; two heads fell in the government — that of the Governor of Chiapas State, Elmer Setzer, and that of the Minister of the Interior (and former Governor of Chiapas), Patrocinio González Garrido; and last but not least, a unilateral cease-fire was declared by the President himself on 12 January. The EZLN accepted the cease-fire and withdrew to “its own” territory, the dense jungle known as the Selva Lacandona.

That was also the date on which the ICRC, which had been present in Chiapas since 5 January, thanks to the support and cooperation of the Mexican Red Cross (MRC), offered its services in order to assist the victims of the conflict and ensure that the protection provided for by international humanitarian law was guaranteed by the parties.

## Humanitarian action and dialogue

It is interesting to note that in its very first communiqué, the *Declaración de la Selva Lacandona* issued to the national and international press, on 1 January, the EZLN had declared its intention to respect the “law of war” and its desire for the presence of the “International Red Cross” in Chiapas. In spite of some inaccuracies in the wording, the intentions were good and above all clearly expressed.

The offer of services was accepted one week later, on 17 January, and as from the 18th the ICRC was authorized to visit some 70 detainees held in the Cerro Hueco prison at Tuxtla Gutiérrez, the capital of Chiapas State (the other 73 had meanwhile been released). These visits, like all those which followed until the last three detainees were freed in mid-July, were coordinated with the National Commission of Human Rights (NCHR) and were all conducted under conditions conforming with ICRC practice, with the full cooperation of the detaining authorities. Two reports and a *note verbale* containing the findings of the ICRC were sent to the authorities in Mexico City via the Ministry of Foreign Affairs.

The ICRC delegation was also involved from the outset in the “pacification” process intended to bring about the dialogue that the government firmly intended to establish as soon as possible with the EZLN. In this context, both the mediators (the only channel of communication between the ICRC and the EZLN during the first few weeks) and the *Comisionado* called upon the ICRC to establish a permanent presence in the “free zones”

— a vague term used to designate the buffer zones that the EZLN wanted to have in order to avoid any direct contact with the Federal Army.

The presence that the ICRC was requested to establish in the “free zones” was essentially a medical one, in order to provide the civilian population in the conflict area with the assistance that had been cut off since 1 January. The government demanded however that the ICRC work with Mexican staff, from the Ministry of Health or from the Mexican Red Cross.

After several postponements, partly due to misunderstandings between the government and the EZLN (communication with which soon proved difficult owing to the impossibility of direct contacts), on 4 February the ICRC unfurled its flag at San Miguel and Guadalupe Tepeyac, two “free zones” on which the parties had managed to agree. These zones were situated at the two main entrances to the Selva Lacandona.

Medical work began there immediately, with staff from the Epidemiology Department, dispatched by the Ministry of Health from Mexico City as a vanguard to deal with the emergency. From the outset, the main role played by the ICRC was that of a “guarantor of neutrality”, enabling the Mexican medical staff to operate in a hostile region.

Very soon after the opening of the “free zones”, proceedings to establish a dialogue between the government and the neo-Zapatistas were stepped up, resulting in an intensification of ICRC activities.

The ICRC was thus requested to place EZLN delegates, whom it was to transport from an unknown point in the Selva Lacandona to the meeting-place (both places to be kept secret until the day before the meeting), under the protection of the red cross emblem and to guarantee the neutrality of the area around the place where the dialogue was to be held. The actual meeting-place could not be demilitarized, since some of the EZLN delegates refused to lay down their arms. At that early stage there was no mention of negotiation, although the term was to be used freely by the media as soon as the meetings began.

Meanwhile, the ICRC representatives had at last managed to take up direct contacts with the EZLN, and particularly with its spokesman, the highly publicity-conscious and publicized “Sub-Commander Marcos”. At this first meeting, as at all the following ones, the ICRC representatives had the unaccustomed experience of conversing with masked men — a set-up that well reflected the “mystery” surrounding this armed insurrection movement, whose claims, pragmatic and at the same time simple and basic, are virtually all that is known about it with any certainty. There

is no ideology or dogmatism in the EZLN's many declarations and communiqués, and the movement seems to have a purely indigenous origin. "Marcos" is white, obviously from an urban bourgeois background, and one of the most successful media figures of the late twentieth century. He is the EZLN's military leader and spokesman, and represents both its collective image and the link between the indigenous world (which has hardly changed since the days of Emiliano Zapata or indeed of Hernán Cortés and Montezuma) and modern, industrialized Mexico. The two Mexicos do not speak the same language, in the literal or in the figurative sense, and "Marcos" thus provides an interface between the two cultures. Accordingly, the "neo-Zapatista revolution" would appear to be a phenomenon completely different from the Latin American guerrilla movements witnessed so far, but one of which, as we have already said, very little is known.

### THE ROLE OF THE ICRC: GOOD OFFICES AND NEUTRAL INTERMEDIARY

#### The "free zones"

As soon as the "free zones" were established, the role of the ICRC began to be more clearly defined. Its presence in the two buffer zones was above all designed to prevent the resumption or escalation of open conflict such as that experienced by the country during the first twelve days of January. Since the practical work was being carried out by Mexican staff belonging to official Mexican health institutions, the ICRC's role was primarily to act as guarantor — from the point of view both of the EZLN and of the government — of the neutrality and impartiality of the work carried on by the teams.

#### The release of General Castellanos

Once the "free zones" had been created, the next step towards setting up a dialogue between the parties was the release of the only prisoner taken by the EZLN during its January offensive, retired General Absalón Castellanos Domínguez. A former Governor of Chiapas State and a major landowner, he possessed several large estates and thus personified the

power and the political and economic system that the EZLN challenged and sought to dismantle. The ICRC had had access to General Castellanos, having visited him twice while he was held in the heart of the Selva Lacandona.

When arrangements were made for his release on 16 February, at the edge of the "free zone" of Guadalupe Tepeyac, it was naturally the ICRC that the mediation team, on behalf of the EZLN, requested to witness the event. This was accompanied by a long ceremony, organized to the last detail by the EZLN, which often showed a marked inclination for staging media events. The release of General Castellanos, with its complicated procedure (the EZLN handed him over to the ICRC, which handed him over to the mediator, who handed him over to the *Comisionado*, who handed him over to his family ...), also marked the first meeting between a representative of the government and members of the guerrilla movement, although no direct contact was established on this occasion.



Release of General Absalón Castellanos, on 16 February 1994.  
Photograph ICRC/E. Thibaut.

## Preparations for dialogue

Five days later began the "conversations in the cathedral", to paraphrase the Peruvian writer Vargas Llosa. It was indeed in the superb and impressive baroque cathedral of San Cristóbal de Las Casas — a small drowsy colonial town at an altitude of 2,300 metres in the heart of the Altos de Chiapas mountains — that the dialogue between the government and the EZLN was initiated on 21 February. The day before, the ICRC had once again been asked to lend its good offices. After long and meticulous preparations with the *Comisionado* and mediation teams, on the morning of 20 February three ICRC teams went to three different places to collect the 19 EZLN delegates supposed to come to San Cristóbal to take part in the meeting. Each convoy contained one white vehicle provided by the mediation team to carry those EZLN representatives (such as "Sub-Commander Marcos" and some others) who wished to retain their weapons.

The journeys took between one and a half and five hours, the routes and other arrangements having been settled in the minutest detail (for example, responsibility for security was assumed by the *Policía Federal de Caminos* — Federal Road Police — where the convoys joined paved roads and all the Federal Army checkpoints on the roads leading to San Cristóbal were opened). The operation was successful and was carried out within a minute or so of the times scheduled.

A "neutral humanitarian area" was declared all round the cathedral — a strip several metres wide bordered with bands of white fabric on which some 200 volunteers from the Mexican Red Cross had painted the ICRC emblem. No one was allowed to enter this neutral area, which was placed under the surveillance of about 350 volunteers from the National Society, who took turns to stand watch night and day with exemplary selflessness and discipline (for the nights can be bitterly cold in the Chiapas mountains in February...). They were further reinforced by several hundred equally motivated volunteers from ESPAZ (*Espacio para la Paz*)<sup>2</sup>. The military police only took third place, and carried no weapons except truncheons. An ICRC vehicle was permanently stationed in front of the main doorway of the cathedral, constantly flying its flag as a symbol of the neutrality of the area, but also as a precaution in case of an emergency evacuation.

<sup>2</sup> A body coordinating the work of Mexican NGOs.

## The dialogue

For several days the cathedral was transformed into a kind of vast television set: on one platform stood a long table surrounded by some thirty chairs (for the EZLN delegates, the *Comisionado* and the mediator) and covered with microphones, against the backdrop of an enormous Mexican flag draped over the altar; another platform in the main nave accommodated some 300 photographers and cameramen, and serried rows of benches enabled dozens more journalists to sit down during the long periods of waiting for press conferences and daily press releases. The many statues of the Virgin, Jesus Christ and various saints looked down resignedly on the scene and bore on their pedestals notices asking the occupants to refrain from smoking ... This house of prayer dating back to the sixteenth century had thus become the hub of political and media activity in Mexico in 1994. The actual meetings between the "negotiators" took place in closed session in the many diocesan side buildings. The ICRC did not take part in them (having no reason to do so), and confined itself to having separate talks with each party at the end of this first meeting, on 2 March, in order to find out the conclusions they had reached concerning the ICRC's presence in Chiapas. That presence was maintained, within the limits of the activities conducted hitherto.

On the following day, in the small hours of the morning (to evade the journalists and for security reasons), the convoys scheduled to take the EZLN delegates back to their points of departure set off along the routes they had followed on the way out, and with the same arrangements — and everything went as smoothly as it had before.

## AFTER THE DIALOGUE

These events were followed by a long period of consultations at EZLN headquarters on the proposals put forward by the government, and then by the suspension of these consultations as a result of the assassination of the candidate of the PRI<sup>3</sup> before the August presidential elections.

During this period, the ICRC continued to play its role as a neutral intermediary in the field: medical activities were strengthened and expanded, a vaccination programme was started for women and children

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<sup>3</sup> The Institutional Revolutionary Party, which had held power uninterruptedly for over 65 years.

living in the EZLN enclave and lacking any other form of medical assistance, and dental care was provided from time to time. All these activities were developed by agreement and in cooperation with the federal health services and those of the State of Chiapas. The condition set by the EZLN for allowing State employees to travel and work in the territory under its control was that they should be accompanied by ICRC representatives.

Similarly, a food aid operation was begun in May, after surveys conducted by the ICRC and the Mexican Red Cross in remote areas of the Selva Lacandona, which had been most severely affected by the severance of all trade and transport links with the main towns of that part of Chiapas, had shown that the nutritional status of the local civilian population was deteriorating sharply. The situation had been further aggravated by the fact that the fighting in January had prevented most of the indigenous peasants from harvesting their coffee and laying in stocks of food against the long and difficult rainy season. The ICRC and the Mexican Red Cross therefore initiated a joint food aid programme for three months (to cover the period until the August harvest) for 20,000 inhabitants of the "conflict area" and for 5,000 displaced people. The programme was run by the Mexican Red Cross and financed by the ICRC, which was also responsible for maintaining contact with the EZLN at various levels in the field, in order to obtain the safety guarantees essential for the success of the operation. This was also the background of the meeting between "Sub-Commander Marcos" and the President of the Mexican Red Cross, Dr Fernando Uribe Calderón — which was made possible by the good offices of the ICRC — to enable the National Society to inform the military head of the EZLN personally about the assistance programme.

On 4 May, the semblance of a dialogue was renewed between the *Comisionado* and the EZLN, this time in "Zapatista territory", on the edge of the "free zone" of Guadalupe Tepeyac. The good offices of the ICRC were once again solicited by the parties and the mediation team, with the request for delegates to escort the convoy carrying the mediator, the *Comisionado* and their respective teams from the last Federal Army checkpoint to the meeting-place. The surroundings were bucolic: oppressed by the torrid heat, the protagonists met in a wooden hut in the middle of a small clearing in the depths of the dense and humid jungle. On this occasion too, the ICRC delimited the area round the meeting-place, while security was ensured by about 500 guerrilla fighters discreetly concealed in the jungle.

The meeting, though brief and without tangible results, nevertheless marked the resumption of consultations from EZLN headquarters. The results were made public on 11 June, through a series of press releases: the neo-Zapatistas announced their decision to reject the government's proposals, thus putting an end to the "San Cristóbal dialogue". This came as a great shock to a country already in pre-electoral turmoil, since most Mexicans, optimistic by nature, believed or wanted to believe that peace was within arm's reach. Yet despite the failure implied by the EZLN communiqés, there remained the comforting reality of the continued cease-fire between the parties, and hence the maintenance of the "free zones" established in February.

### THE ICRC AND THE ELECTIONS

From that time on, all political attention and tension in Mexico was concentrated on the forthcoming elections. In one of its communiqés of 11 June, the EZLN mentioned a possible role for the ICRC as a "watch-dog" over the electoral procedure in the areas under its control. The delegation immediately contacted the Zapatista leaders, pointing out that the ICRC's mandate precluded it from supervising elections, an activity totally foreign to the humanitarian context in which all its work had to be conducted.

The EZLN then sent a letter to the ICRC specifying the role that it was asked to play, namely that of escorting staff bringing balloting equipment into "its" territory, in order to bear neutral witness to the fact that nothing untoward had happened to them. In the end, and once again thanks to the mediation of the Bishop of San Cristóbal, the parties agreed to request the ICRC to escort the equipment and staff from the last army checkpoint to the two "free zones", which were to serve as a "logistical base" for the orderly conduct of elections in "Zapatista territory".

Once again, therefore, the ICRC placed its good offices at the service of the parties, in order to facilitate a meeting between them in the course of an extremely delicate electoral procedure, in which the least slip might lead to the resumption of hostilities and seriously jeopardize the fragile peace that had reigned in Chiapas since 13 January.

In addition, this operation raised a question of principle: the ICRC's decision to accede to the parties' request prompted a very interesting debate within the institution as to the threshold beyond which the ICRC should in no case use its good offices or engage in mediation.

As a humanitarian institution mindful of the continuity of its activities, the ICRC has formulated guidelines designed to ensure the consistency of its work despite the passage of time, as well as its conformity with the Fundamental Principles of the Red Cross and Red Crescent.

Were the initiatives taken in the field by the ICRC delegation in Mexico, at the request of the parties to the conflict and with the agreement of senior operational officers at ICRC headquarters, in conformity with the guidelines adopted in peacetime? Or had that delegation exceeded its competence by engaging in political matters? Those were the main questions raised in the debate.

Generally speaking, with regard to problems relating to the causes of the dispute (and the Mexican elections were certainly such a cause, since the holding of transparent and honest elections was one of the most important of the EZLN's claims), "all the cases had an obvious humanitarian aspect, since they were by definition linked to situations of conflict or threat of conflict. Any distinction based only on their more or less humanitarian character would therefore be inconclusive". Moreover, the ICRC guidelines provided a doctrinal basis for the decision taken by the delegation in Chiapas, with the agreement of the desk officer at ICRC headquarters, to consent to the request put forward by the parties: "There is nothing to prevent it *a priori* from responding favourably to a request for good offices which might lie in (...) helping to ensure the implementation of an agreement concluded without its intermediary action".

The agreement that elections should also be held in "Zapatista territory" had been secured by the mediator after several bilateral consultations with the EZLN leadership and with the government's *Comisionado*, and under this agreement the parties had sought the good offices of the ICRC as a neutral organization trusted by them. On the basis of that request, the ICRC had agreed to escort the staff and the balloting equipment without thereby assuming any responsibility in the election procedure itself.

Without the cooperation of the ICRC, the elections in the EZLN fiefdom could probably never have been held. That would undoubtedly have exacerbated tension in an already sorely tried region, with readily imaginable consequences of humanitarian concern — for example, a mass exodus of civilians unable to express themselves by democratic means when they wished to do so, or even a resumption of hostilities.

## CONCLUSIONS

The ICRC's "Mexican story" goes on, since no solution has yet been found for the crisis that erupted in the south-eastern part of the country on that freezing night of 1 January — a crisis that has provided us with a wealth of experience and lessons.

### Cooperation with the Mexican Red Cross

Mention must be made of the excellent example of cooperation shown by the teamwork with the MRC, and particularly with its Chiapas branch.

In the very first days of January, the Mexican Red Cross issued a communiqué drawing attention to the principles of international humanitarian law and in that context suggesting the possibility of ICRC action. Moreover, its Chiapas branch had been at work since 1 January, evacuating the wounded and the civilian population from danger areas; those activities were later somewhat restricted because of an incident on 5 January, in which three first-aid workers engaged in MRC operations were wounded.

In subsequent weeks, the Mexican Red Cross undertook to assist people displaced as a result of the conflict. Their numbers varied during the ensuing months, reaching a peak of about 25,000 in February, declining to 5,000 in May and increasing again to about 15,000 in June/July, following the EZLN's announcement of its rejection of the government's proposals. Throughout its operation in aid of displaced people, the MRC, which was entirely responsible for the operation, was supported by the ICRC.

Apart from some initial misunderstandings and misapprehensions (inevitable when an institution such as the ICRC worked for the first time with a National Society which itself was for the first time confronted with a conflict situation), relations were excellent, being based on mutual recognition: the MRC came to know the ICRC and to trust it (or at least so we hope), having realized the complementarity of their roles and responsibilities, while the ICRC went through the same process, adding to it the humility which is an essential factor in a country and society jealous of their prerogatives and anxious to retain them.

The MRC is a strong and powerful National Society which holds an important position in Mexican life. Without its support, the ICRC would never have been able to make its way rapidly to Chiapas at the very beginning of the conflict and to establish its presence there.

On the other hand, the MRC has to deal with financial problems due to its size, the expanse of the country and the many difficulties it is faced with in coordinating its many branches and activities scattered over a vast territory with considerable cultural, social and economic differences. Cooperation with the ICRC has had the important advantage of enabling the MRC to take action in circumstances calling for resources and know-how (experience of conflict situations) which it lacked. The National Society has fully recognized those shortcomings, and it gave me great pleasure to note, in the course of an impromptu statement made at a seminar organized by the MRC delegation in the south-eastern part of the country, the interest that the Chiapas experience had aroused among other branches, especially those which might be faced with a situation similar to that known by Chiapas since January 1994.

## **ICRC action to avert conflict**

Without claiming that a resumption of hostilities in Chiapas was avoided thanks to ICRC action, it can justifiably be asserted that its presence on several occasions at least facilitated dialogue and meetings between the parties, at the political as well as the humanitarian level.

Although the dialogues of San Cristóbal and Guadalupe Tepeyac were above all important political landmarks, the role played in them by the ICRC was in full conformity with its mandate and the guidelines laid down in its principles and established policy. It was therefore also thanks to its good offices and its role as a neutral intermediary that the necessary conditions for this dialogue were created.

It was again thanks to its good offices and its permanent presence in San Miguel and Guadalupe Tepeyac that agreement could be reached at a more strictly humanitarian level, as in the case of medical activities.

Finally, its good offices made it possible for such a purely political procedure as that of the elections of 21 August to be conducted with all the necessary guarantees in a conflict area where the armed insurgents agreed to facilitate such a thoroughly democratic expression of will, provided that an institution such as the ICRC played its part and thus minimized the danger of a serious deterioration of the politico-military situation.

## Sole organization present

For reasons independent of the realities prevailing in the region and more closely related to political will, especially on the part of the Mexican government, the ICRC was and continues to be the only international humanitarian body operating in Chiapas in communication with the neo-Zapatista insurrection. Apart from the Mexican Red Cross and several local NGOs, it is indeed the only humanitarian agency present in the region.

Although these NGOs and the MRC are able to cover assistance needs, despite certain financial difficulties, the ICRC's role as a neutral intermediary and its good offices have proved to be irreplaceable, as many of its Mexican partners in discussion recognize.

This goes hand in hand with the full understanding of the role and specific nature of the ICRC shown by most of these people. Seldom has it found such fertile ground — it did so particularly among the mediation team and the EZLN — for explaining its mandate and making sure that it is understood.

## Constraints on ICRC action in Mexico

To be quite honest, it must also be acknowledged that ICRC action in Chiapas has been, and to a certain extent continues to be, subjected to considerable restrictions.

Although relations with the parties have improved over recent months, so much so that they now show more confidence in the ICRC and a greater understanding of its role and its specific mandate, it is also true that for a long time the government imposed major constraints on the ICRC, in particular as regards the delegates' presence and freedom of movement in the field, other than in the two "free zones", and their work to promote knowledge of international humanitarian law.

Though delegates are now much freer to work and move from place to place in the field, the extreme "discretion" that the ICRC has had to show in order to maintain a presence that will give offence to no one has prevented it from making itself known to the general public, and even to groups directly concerned by its activities.

Nevertheless, in the interest of actual or potential victims, it is important for the ICRC to be able to maintain the essential role that it has played thus far, sparing no effort to carry out its mandate as fully and successfully as possible.

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### **FIFTIETH ANNIVERSARY OF THE LIBERATION OF AUSCHWITZ CONCENTRATION CAMP**

The fiftieth anniversary of the liberation of Auschwitz concentration camp was held on 26-27 January 1995. Attending the ceremonies at Krakow and Auschwitz were several hundred survivors of the camp, representatives of associations of former deportees, 19 heads of State and numerous distinguished guests, including Mr Elie Wiesel and Mrs Simone Veil.

Invited in its capacity as Nobel Peace Prize laureate, the ICRC was represented at these ceremonies by its President, Mr Cornelio Sommaruga; Mrs Liselotte Kraus-Gurny, a member of the Committee; Mr Charles Biedermann, Director of the International Tracing Service; Mr François Bugnion, Deputy Director for Principles, Law and Relations with the Movement, and Ms Ewa Tuszynski, interpreter.

On 26 January, Mr Biedermann and Mr Bugnion attended a formal meeting of the Senate of the Jagiellonian University of Krakow, which marked the opening of the ceremonies. First was an address by the rector of the University on the subject of academic responsibility in seeking truth and fostering tolerance. Afterwards, the President of Poland, Mr Lech Walesa, and other dignitaries spoke on various topics, with particular emphasis on the vital importance of respect for one's fellow human beings, tolerance, and the importance of preserving the memory of the Holocaust while avoiding any revisionist changes.

That afternoon, Mr Sommaruga and Mrs Kraus-Gurny attended a meeting of delegation leaders, including several heads of State, convened by Mr Walesa to approve the text of an appeal for peace and tolerance that was to be made the following day at Auschwitz-Birkenau. During the meeting, which was held at Wawel, the Krakow Royal Palace, the ICRC President pointed out that the ICRC was taking part in these ceremonies to pay tribute to the memory of all victims, and to express its admiration of and solidarity with the survivors of Auschwitz. "I say it with humility, aware of the possible omissions and mistakes of the Red Cross in the past," he added. Mr Sommaruga also called for the development of a society based on tolerance and solidarity.

On Friday 27 January, commemorative ceremonies were held at Auschwitz-Birkenau in the presence of many distinguished guests, including 19 European heads of State, representatives of Jewish organizations and associations of former victims of persecution, as well as several hundred former deportees.

Participants first went to Auschwitz I, where they passed through a gate above which the words *Arbeit macht frei* [“Work makes you free”] were written in iron letters. A wreath was placed between Blocks 10 and 11, in front of the wall where the executions took place.

The main ceremonies were held in front of the Monument of Nations at Auschwitz-Birkenau, at the end of the railway where trains carrying deportees stopped.

Prayers were offered in keeping with Jewish, Catholic, Orthodox, Reformed and Islamic tradition, followed by an address by Baron Goldstein, President of the International Auschwitz Committee. Testimonies were then given by Mr S. Ryniak, a former deportee (registered under No. 31, he was the oldest surviving deportee), Mr S. Weiss, Speaker of the Knesset of the State of Israel, Mr Wiesel, Nobel Peace Prize laureate, and Mr Walesa. The predominant note sounded by these speakers was an appeal for tolerance.

Wreaths bearing the colours of each of the 31 countries whose citizens had been exterminated at Auschwitz were then placed at the site.

At the end of the ceremonies, thousands of candles were lit and placed along the railway as a tribute to the countless victims of Nazi persecution.

\* \* \*

Auschwitz symbolizes the most heinous crime ever committed in the history of mankind. For the Jewish people, it was an unprecedented tragedy, the extreme expression of the Hitler regime’s attempt to annihilate them through genocide. For over one million men, women and children, it marked the final phase of an unspeakable ordeal. Of the victims, 90 per cent were Jews; the others were Romanies, Soviet prisoners of war, and members of the Resistance, the Polish intelligentsia and the clergy. There were a mere 7,500 survivors.

Auschwitz also represents the greatest failure in the history of the ICRC, aggravated by its lack of decisiveness in taking steps to aid the victims of persecution.

By its presence at these ceremonies, the ICRC wished to show its awareness of the terrible wounds inflicted, and of the need to keep the memory of these events alive in order to protect victims from a second death — that of being forgotten.

GENEVA CONVENTIONS OF 12 AUGUST 1949  
AND  
ADDITIONAL PROTOCOLS OF 8 JUNE 1977  
RATIFICATIONS, ACCESSIONS AND SUCCESSIONS  
*- AS AT 31 DECEMBER 1994*

## 1. Abbreviations

R/A/S = *Ratification*: a treaty is generally open for signature for a certain time following the conference which has adopted it. However, a signature is not binding on a State unless it has been endorsed by ratification. The time limits having elapsed, the Conventions and the Protocols are no longer open for signature. The States which have not signed them may at any time accede or, in the appropriate circumstances, succeed to them.

*Accession*: instead of signing and then ratifying a treaty, a State may become party to it by the single act called accession.

*Succession* (declaration of): a newly independent State may declare that it will abide by a treaty which was applicable to it prior to its independence. A State may also declare that it will provisionally abide by such treaties during the time it deems necessary to examine their texts carefully and to decide on accession or succession to some or all of the said treaties (declaration of provisional application of the treaties). At present no State is bound by such a declaration.

R/D = *Reservation/Declaration*: unilateral statement, however phrased or named, made by a State when ratifying, acceding or succeeding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State (provided that such reservations are not incompatible with the object and purpose of the treaty).

D90 = *Declaration* provided for under Article 90 of Protocol 1 (prior acceptance of the competence of the International Fact-Finding Commission).

## 2. Dates

The dates indicated are those on which the Swiss Federal Department of Foreign Affairs received the official instrument from the State that was ratifying, acceding to or succeeding to the Conventions or Protocols or accepting the competence of the Commission provided for under Article 90 of Protocol I. They thus represent neither the date on which ratification, accession, succession or acceptance of the Commission was decided upon by the State concerned nor that on which the corresponding instrument was sent.

N.B.: *The dates given for succession to the Geneva Conventions by CONGO, JAMAICA, MADAGASCAR, MAURITANIA, NIGER, NIGERIA, RWANDA, SENEGAL, SIERRA LEONE and ZAIRE used to be those on which the corresponding instruments had been officially adopted. They have now been replaced by the dates on which the depositary received those instruments.*

## 3. Entry into force

Except as mentioned in footnotes at the end of the tables, for all States the entry into force of the Conventions and of the Protocols occurs six months after the date given in the present document; for States which have made a declaration of succession, entry into force takes place retroactively, on the day of their accession to independence.

The 1949 Geneva Conventions entered into force on 21 October 1950.

The 1977 Protocols entered into force on 7 December 1978.

## 4. Names of countries

The names of countries given in the following list may differ from the official names of States.

## 5. Update since 31.12.93

### Ratifications, accessions or successions to Additional Protocol I

San Marino	:	05.04.1994
Ethiopia	:	08.04.1994
Lesotho	:	20.05.1994

Dominican Republic : 26.05.1994  
Namibia : 17.06.1994

**Ratifications, accessions or successions to Additional Protocol II**

San Marino : 05.04.1994  
Ethiopia : 08.04.1994  
Lesotho : 20.05.1994  
Dominican Republic : 26.05.1994  
Namibia : 17.06.1994

**Declaration under Article 90**

Rwanda : 08.07.1993 (notification: 17.01.95)  
Bulgaria : 09.05.1994  
Portugal : 01.07.1994  
Namibia : 21.07.1994

## 6. Ratifications, accessions and successions

COUNTRY	GENEVA CONVENTIONS		PROTOCOL I			PROTOCOL II	
	R/A/S	R/D	R/A/S	R/D	D90	R/A/S	R/D
Afghanistan	26.09.1956 R						
Albania	27.05.1957 R	X	16.07.1993 A			16.07.1993 A	
Algeria	20.06.1960 A		16.08.1989 A	X	16.08.1989	16.08.1989 A	
Andorra	17.09.1993 A						
Angola	20.09.1984 A	X	20.09.1984 A	X			
Antigua and Barbuda	06.10.1986 S		06.10.1986 A			06.10.1986 A	
Argentina	18.09.1956 R		26.11.1986 A	X		26.11.1986 A	X
Armenia	07.06.1993 A		07.06.1993 A			07.06.1993 A	
Australia	14.10.1958 R	X	21.06.1991 R	X	23.09.1992	21.06.1991 R	
Austria	27.08.1953 R		13.08.1982 R	X	13.08.1982	13.08.1982 R	X
Azerbaijan	01.06.1993 A						
Bahamas	11.07.1975 S		10.04.1980 A			10.04.1980 A	
Bahrain	30.11.1971 A		30.10.1986 A			30.10.1986 A	
Bangladesh	04.04.1972 S		08.09.1980 A			08.09.1980 A	
Barbados	10.09.1968 S	X	19.02.1990 A			19.02.1990 A	
Belarus	03.08.1954 R	X	23.10.1989 R		23.10.1989	23.10.1989 R	
Belgium	03.09.1952 R		20.05.1986 R	X	27.03.1987	20.05.1986 R	
Belize	29.06.1984 A		29.06.1984 A			29.06.1984 A	
Benin	14.12.1961 S		28.05.1986 A			28.05.1986 A	
Bhutan	10.01.1991 A						
Bolivia	10.12.1976 R		08.12.1983 A		10.08.1992	08.12.1983 A	
Bosnia-Herzegovina	31.12.1992 S		31.12.1992 S		31.12.1992	31.12.1992 S	
Botswana	29.03.1968 A		23.05.1979 A			23.05.1979 A	
Brazil	29.06.1957 R		05.05.1992 A		23.11.1993	05.05.1992 A	
Brunei Darussalam	14.10.1991 A		14.10.1991 A			14.10.1991 A	
Bulgaria	22.07.1954 R	X	26.09.1989 R		09.05.1994	26.09.1989 R	
Burkina Faso	07.11.1961 S		20.10.1987 R			20.10.1987 R	
Burundi	27.12.1971 S		10.06.1993 A			10.06.1993 A	
Cambodia	08.12.1958 A						
Cameroon	16.09.1963 S	-	16.03.1984 A			16.03.1984 A	
Canada	14.05.1965 R		20.11.1990 R	X	20.11.1990	20.11.1990 R	X
Cape Verde	11.05.1984 A						
Central African Republic	01.08.1966 S		17.07.1984 A			17.07.1984 A	
Chad	05.08.1970 A						
Chile	12.10.1950 R		24.04.1991 R		24.04.1991	24.04.1991 R	
China	28.12.1956 R	X	14.09.1983 A	X		14.09.1983 A	
Colombia	08.11.1961 R		01.09.1993 A				
Comoros	21.11.1985 A		21.11.1985 A			21.11.1985 A	
Congo	04.02.1967 S		10.11.1983 A			10.11.1983 A	
Costa Rica	15.10.1969 A		15.12.1983 A			15.12.1983 A	
Côte d'Ivoire	28.12.1961 S		20.09.1989 R			20.09.1989 R	
Croatia	11.05.1992 S		11.05.1992 S		11.05.1992	11.05.1992 S	
Cuba	15.04.1954 R		25.11.1982 A				
Cyprus	23.05.1962 A		01.06.1979 R				
Czech Republic	05.02.1993 S	X	05.02.1993 S			05.02.1993 S	
Denmark	27.06.1951 R		17.06.1982 R	X	17.06.1982	17.06.1982 R	
Djibouti	06.03.1978 S		08.04.1991 A			08.04.1991 A	

COUNTRY	GENEVA CONVENTIONS		PROTOCOL I			PROTOCOL II	
	R/A/S	R/D	R/A/S	R/D	D90	R/A/S	R/D
Dominica	28.09.1981 S						
Dominican Republic	22.01.1958 A		26.05.1994 A			26.05.1994 A	
Ecuador	11.08.1954 R		10.04.1979 R			10.04.1979 R	
Egypt	10.11.1952 R		09.10.1992 R	X		09.10.1992 R	X
El Salvador	17.06.1953 R		23.11.1978 R			23.11.1978 R	
Equatorial Guinea	24.07.1986 A		24.07.1986 A			24.07.1986 A	
Estonia	18.01.1993 A		18.01.1993 A			18.01.1993 A	
Ethiopia	02.10.1969 R		08.04.1994 A			08.04.1994 A	
Fiji	09.08.1971 S						
Finland	22.02.1955 R		07.08.1980 R	X	07.08.1980	07.08.1980 R	
France	28.06.1951 R					24.02.1984 <sup>a</sup> A	X
Gabon	26.02.1965 S		08.04.1980 A			08.04.1980 A	
Gambia	20.10.1966 S		12.01.1989 A			12.01.1989 A	
Georgia	14.09.1993 A		14.09.1993 A			14.09.1993 A	
Germany	03.09.1954 A	X	14.02.1991 R	X	14.02.1991	14.02.1991 R	X
Ghana	02.08.1958 A		28.02.1978 <sup>b</sup> R			28.02.1978 <sup>c</sup> R	
Greece	05.06.1956 R		31.03.1989 R			15.02.1993 A	
Grenada	13.04.1981 S						
Guatemala	14.05.1952 R		19.10.1987 R			19.10.1987 R	
Guinea	11.07.1984 A		11.07.1984 A		20.12.1993	11.07.1984 A	
Guinea-Bissau	21.02.1974 A	X	21.10.1986 A			21.10.1986 A	
Guyana	22.07.1968 S		18.01.1988 A			18.01.1988 A	
Haiti	11.04.1957 A						
Holy See	22.02.1951 R		21.11.1985 R	X		21.11.1985 R	X
Honduras	31.12.1965 A						
Hungary	03.08.1954 R	X	12.04.1989 R		23.09.1991	12.04.1989 R	
Iceland	10.08.1965 A		10.04.1987 R	X	10.04.1987	10.04.1987 R	
India	09.11.1950 R						
Indonesia	30.09.1958 A						
Iran (Islamic Rep. of)	20.02.1957 R	X					
Iraq	14.02.1956 A						
Ireland	27.09.1962 R						
Israel	06.07.1951 R	X					
Italy	17.12.1951 R		27.02.1986 R	X	27.02.1986	27.02.1986 R	
Jamaica	20.07.1964 S		29.07.1986 A			29.07.1986 A	
Japan	21.04.1953 A						
Jordan	29.05.1951 A		01.05.1979 R			01.05.1979 R	
Kazakhstan	05.05.1992 S		05.05.1992 S			05.05.1992 S	
Kenya	20.09.1966 A						
Kiribati	05.01.1989 S						
Korea (Dem. People's Rep. of)	27.08.1957 A	X	09.03.1988 A				
Korea (Republic of)	16.08.1966 <sup>d</sup> A	X	15.01.1982 R	X		15.01.1982 R	
Kuwait	02.09.1967 A	X	17.01.1985 A			17.01.1985 A	
Kyrgyzstan	18.09.1992 S		18.09.1992 S			18.09.1992 S	
Lao People's Dem. Rep.	29.10.1956 A		18.11.1980 R			18.11.1980 R	
Latvia	24.12.1991 A		24.12.1991 A			24.12.1991 A	
Lebanon	10.04.1951 R						
Lesotho	20.05.1968 S		20.05.1994 A			20.05.1994 A	
Liberia	29.03.1954 A		30.06.1988 A			30.06.1988 A	

COUNTRY	GENEVA CONVENTIONS		PROTOCOL I			PROTOCOL II	
	R/A/S	R/D	R/A/S	R/D	D90	R/A/S	R/D
Libyan Arab Jamahiriya	22.05.1956 A		07.06.1978 A			07.06.1978 A	
Liechtenstein	21.09.1950 R		10.08.1989 R X		10.08.1989	10.08.1989 R X	
Luxembourg	01.07.1953 R		29.08.1989 R		12.05.1993	29.08.1989 R	
Madagascar	18.07.1963 S		08.05.1992 R		27.07.1993	08.05.1992 R	
Malawi	05.01.1968 A		07.10.1991 A			07.10.1991 A	
Malaysia	24.08.1962 A						
Maldives	18.06.1991 A		03.09.1991 A			03.09.1991 A	
Mali	24.05.1965 A		08.02.1989 A			08.02.1989 A	
Malta	22.08.1968 S		17.04.1989 A X		17.04.1989	17.04.1989 A X	
Mauritania	30.10.1962 S		14.03.1980 A			14.03.1980 A	
Mauritius	18.08.1970 S		22.03.1982 A			22.03.1982 A	
Mexico	29.10.1952 R		10.03.1983 A				
Moldova (Republic of)	24.05.1993 A		24.05.1993 A			24.05.1993 A	
Monaco	05.07.1950 R						
Mongolia	20.12.1958 A						
Morocco	26.07.1956 A						
Mozambique	14.03.1983 A		14.03.1983 A				
Myanmar	25.08.1992 A						
Namibia	22.08.1991 <sup>6</sup> S		17.06.1994 A		21.07.1994	17.06.1994 A	
Nepal	07.02.1964 A						
Netherlands	03.08.1954 R		26.06.1987 R X		26.06.1987	26.06.1987 R	
New Zealand	02.05.1959 R X		08.02.1988 R X		08.02.1988	08.02.1988 R	
Nicaragua	17.12.1953 R						
Niger	21.04.1964 S		08.06.1979 R			08.06.1979 R	
Nigeria	20.06.1961 S		10.10.1988 A			10.10.1988 A	
Norway	03.08.1951 R		14.12.1981 R		14.12.1981	14.12.1981 R	
Oman	31.01.1974 A		29.03.1984 A X			29.03.1984 A X	
Pakistan	12.06.1951 R X						
Panama	10.02.1956 A						
Papua New Guinea	26.05.1976 S						
Paraguay	23.10.1961 R		30.11.1990 A			30.11.1990 A	
Peru	15.02.1956 R	-	14.07.1989 R			14.07.1989 R	
Philippines	06.10.1952 <sup>7</sup> R						
Poland	26.11.1954 R X		23.10.1991 R		02.10.1992	23.10.1991 R	
Portugal	14.03.1961 R X		27.05.1992 R		01.07.1994	27.05.1992 R	
Qatar	15.10.1975 A		05.04.1988 A X		24.09.1991		
Romania	01.06.1954 R X		21.06.1990 R			21.06.1990 R	
Russian Federation	10.05.1954 R X		29.09.1989 R X		29.09.1989	29.09.1989 R X	
Rwanda	05.05.1964 S		19.11.1984 A		08.07.1993	19.11.1984 A	
Saint Kitts and Nevis	14.02.1986 S		14.02.1986 A			14.02.1986 A	
Saint Lucia	18.09.1981 S		07.10.1982 A			07.10.1982 A	
Saint Vincent and Grenadines	01.04.1981 A		08.04.1983 A			08.04.1983 A	
Samoa	23.08.1984 S		23.08.1984 A			23.08.1984 A	
San Marino	29.08.1953 A		05.04.1994 R			05.04.1994 R	
Sao Tome and Principe	21.05.1976 A						
Saudi Arabia	18.05.1963 A		21.08.1987 A X				
Senegal	18.05.1963 S		07.05.1985 R			07.05.1985 R	
Seychelles	08.11.1984 A		08.11.1984 A		22.05.1992	08.11.1984 A	

COUNTRY	GENEVA CONVENTIONS		PROTOCOL I			PROTOCOL II	
	R/A/S	R/D	R/A/S	R/D	D90	R/A/S	R/D
Sierra Leone	10.06.1965 S		21.10.1986 A			21.10.1986 A	
Singapore	27.04.1973 A						
Slovakia	02.04.1993 S	X	02.04.1993 S			02.04.1993 S	
Slovenia	26.03.1992 S		26.03.1992 S		26.03.1992	26.03.1992 S	
Solomon Islands	06.07.1981 S		19.09.1988 A			19.09.1988 A	
Somalia	12.07.1962 A						
South Africa	31.03.1952 A						
Spain	04.08.1952 R		21.04.1989 R	X	21.04.1989	21.04.1989 R	
Sri Lanka	28.02.1959 <sup>3</sup> R						
Sudan	23.09.1957 A						
Suriname	13.10.1976 S	X	16.12.1985 A			16.12.1985 A	
Swaziland	28.06.1973 A						
Sweden	28.12.1953 R		31.08.1979 R	X	31.08.1979	31.08.1979 R	
Switzerland	31.03.1950 <sup>9</sup> R		17.02.1982 R	X	17.02.1982	17.02.1982 R	
Syrian Arab Republic	02.11.1953 R		14.11.1983 A	X			
Tajikistan	13.01.1993 S		13.01.1993 S			13.01.1993 S	
Tanzania (United Rep. of)	12.12.1962 S		15.02.1983 A			15.02.1983 A	
Thailand	29.12.1954 A						
The Former Y.R. of Macedonia	01.09.1993 S		01.09.1993 S		01.09.1993	01.09.1993 S	
Togo	06.01.1962 S		21.06.1984 R		21.11.1991	21.06.1984 R	
Tonga	13.04.1978 S						
Trinidad and Tobago	24.09.1963 <sup>10</sup> A						
Tunisia	04.05.1957 A		09.08.1979 R			09.08.1979 R	
Turkey	10.02.1954 R						
Turkmenistan	10.04.1992 S		10.04.1992 S			10.04.1992 S	
Tuvalu	19.02.1981 S						
Uganda	18.05.1964 A		13.03.1991 A			13.03.1991 A	
Ukraine	03.08.1954 R	X	25.01.1990 R		25.01.1990	25.01.1990 R	
United Arab Emirates	10.05.1972 A		09.03.1983 A	X	06.03.1992	09.03.1983 A	X
United Kingdom	23.09.1957 R	X					
United States of America	02.08.1955 R	X					
Uruguay	05.03.1969 R	X	13.12.1985 A		17.07.1990	13.12.1985 A	
Uzbekistan	08.10.1993 A		08.10.1993 A			08.10.1993 A	
Vanuatu	27.10.1982 A		28.02.1985 A			28.02.1985 A	
Venezuela	13.02.1956 R						
Viet Nam	28.06.1957 A	X	19.10.1981 R				
Yemen	16.07.1970 A	X	17.04.1990 R			17.04.1990 R	
Yugoslavia	21.04.1950 R	X	11.06.1979 R	X		11.06.1979 R	
Zaire	24.02.1961 S		03.06.1982 A				
Zambia	19.10.1966 A						
Zimbabwe	07.03.1983 A		19.10.1992 A			19.10.1992 A	

<sup>1</sup> Djibouti's declaration of succession in respect of the First Convention was dated 26.01.78.

<sup>2</sup> On accession to Protocol II, France made a communication concerning Protocol I.

<sup>3</sup> Entry into force on 07.12.78.

- <sup>4</sup> Entry into force on 07.12.78.
- <sup>5</sup> Entry into force on 23.09.66, the Republic of Korea having invoked Art.62/61/141/157 common respectively to the First, Second, Third and Fourth Conventions (immediate effect).
- <sup>6</sup> An instrument of accession to the Geneva Conventions and their Additional Protocols was deposited by the United Nations Council for Namibia on 18.10.83. In an instrument deposited on 22.08.91, Namibia declared its succession to the Geneva Conventions, which were previously applicable pursuant to South Africa's accession on 31.03.52.
- <sup>7</sup> The First Geneva Convention was ratified on 7.03.1951.
- <sup>8</sup> Accession to the Fourth Geneva Convention on 23 February 1959 (Ceylon had signed only the First, Second, and Third Conventions).
- <sup>9</sup> Entry into force on 21.10.50.
- <sup>10</sup> Accession to the First Geneva Convention on 17.05.1963.

#### *Palestine*

On 21 June 1989, the Swiss Federal Department of Foreign Affairs received a letter from the Permanent Observer of Palestine to the United Nations Office at Geneva informing the Swiss Federal Council "that the Executive Committee of the Palestine Liberation Organization, entrusted with the functions of the Government of the State of Palestine by decision of the Palestine National Council, decided, on 4 May 1989, to adhere to the Four Geneva Conventions of 12 August 1949 and the two Protocols additional thereto".

On 13 September 1989, the Swiss Federal Council informed the States that it was not in a position to decide whether the letter constituted an instrument of accession, "due to the uncertainty within the international community as to the existence or non-existence of a State of Palestine".

#### *Lithuania*

Party to the 1929 Geneva Conventions (sick and wounded, prisoners of war).

## 7. Totals

Number of States party to the 1949 Geneva Conventions :	185
Number of States party to Additional Protocol I :	135
Number of States having made the declaration under Article 90 :	42
Number of States party to Additional Protocol II :	125
Number of States Members of the United Nations :	185

States Members of the UN or Parties to the Statute of the International Court of Justice, not party to the 1949 Geneva Conventions: Eritrea, Lithuania, Marshall, Micronesia, Nauru, Palau.

## 8. Chronological list of States having made the declaration provided for under Article 90 of Protocol I

1	Sweden	:	31.08.1979
2	Finland	:	07.08.1980
3	Norway	:	14.12.1981
4	Switzerland	:	17.02.1982
5	Denmark	:	17.06.1982
6	Austria	:	13.08.1982
7	Italy	:	27.02.1986
8	Belgium	:	27.03.1987
9	Iceland	:	10.04.1987
10	Netherlands	:	26.06.1987
11	New Zealand	:	08.02.1988
12	Malta	:	17.04.1989
13	Spain	:	21.04.1989
14	Liechtenstein	:	10.08.1989
15	Algeria	:	16.08.1989
16	Russian Federation	:	29.09.1989
17	Belarus	:	23.10.1989
18	Ukraine	:	25.01.1990
19	Uruguay	:	17.07.1990
20	Canada	:	20.11.1990
21	Germany	:	14.02.1991
22	Chile	:	24.04.1991
23	Hungary	:	23.09.1991
24	Qatar	:	24.09.1991
25	Togo	:	21.11.1991
26	United Arab Emirates	:	06.03.1992
27	Slovenia	:	26.03.1992
28	Croatia	:	11.05.1992
29	Seychelles	:	22.05.1992
30	Bolivia	:	10.08.1992
31	Australia	:	23.09.1992
32	Poland	:	02.10.1992
33	Bosnia-Herzegovina	:	31.12.1992
34	Luxembourg	:	12.05.1993
35	Rwanda	:	08.07.1993
36	Madagascar	:	27.07.1993
37	The Former Y.R. of Macedonia	:	01.09.1993
38	Brazil	:	23.11.1993
39	Guinea	:	20.12.1993
40	Bulgaria	:	09.05.1994
41	Portugal	:	01.07.1994
42	Namibia	:	21.07.1994

**CONFLICTOS ARMADOS INTERNOS  
Y DERECHO INTERNACIONAL HUMANITARIO**

*Internal armed conflicts  
and international humanitarian law*

Although great strides have been made in developing the legal rules governing relations among States, the international community today is gravely concerned with the problem posed by the proliferation of non-international armed conflicts. The author of this study<sup>1</sup> analyses the phenomenon of violence within the confines of a State in relation to the application of international humanitarian law.

As the number of armed conflicts in the world has increased in recent years, so has the number of publications devoted to the discussion of humanitarian law. However, few of them approach the subject solely from the point of view of the rules applicable to internal armed conflicts. One of the main interests of this study is no doubt the fact that it helps to fill this gap by providing an in-depth analysis of this aspect of the law and thereby promotes a better understanding of it.

After reviewing the major internal armed conflicts which have taken place in the world since 1945, the author points out that never before in the history of mankind have there been as many conflicts of this type, and of such varied duration and intensity, as there are today.

The study advances ideological extremism, religious, racial and cultural fanaticism and local social and economic factors as the major causes of the increase in internal armed conflicts. Taking into account this reality, it then discusses the rules of international humanitarian law which are intended to make these situations less inhuman. It is well known that internal armed conflicts are far more ruthless than war between States.

In summarizing the historical development of the international rules governing internal armed conflicts, taking as a starting point the work of the Salamanca

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<sup>1</sup> Araceli Mangas Martín, *Conflictos armados internos y derecho internacional humanitario*, Ediciones Universidad de Salamanca, 1992, pp. 192.

school of theologians and jurists and of E. de Vattel, the author concentrates mainly on recent codification of the law. In particular, she points to the initiatives by the ICRC which led to the adoption by International Conferences of the Red Cross of resolutions that form the basis of current codification in this area. One of the most valuable aspects of the study is its in-depth analysis of the codification process which led to the adoption of Article 3 common to the four Geneva Conventions of 1949 and of their Additional Protocol II of 1977. A detailed examination is made of the discussions on proposals for humanitarian law applicable in non-international armed conflicts which took place during the 1949 and 1977 Diplomatic Conferences.

The study's interest lies not only in its thorough analysis of every aspect of the law applicable in internal armed conflicts, but also in its examination of the implementation of that law in present conflicts. The study draws, among other sources, on Annual Reports of the ICRC and on various positions adopted by the institution.

Included in this examination is a discussion of the distinction between internal armed conflicts and international armed conflicts and, within the former, of the various areas of practical application of humanitarian law, which are determined by the seriousness of the situation, the general nature of the rules governing internal armed conflicts and the legal character of humanitarian law. Also examined are the provisions on protection included in the law and the entire question of monitoring its implementation.

Araceli Mangas Martín's thorough study, with its extensive bibliography, is particularly relevant today when the international community is faced with so many internal armed conflicts. It will no doubt provide the reader with a great deal of information and food for thought.

*Maria Teresa Dutli*

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(Geneva, 23-27 January 1995)

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## THE INTERNATIONAL REVIEW OF THE RED CROSS IN 1995

In 1995 the *Review* will contain articles on the following major topics:

- International Conference of the Red Cross and Red Crescent (Geneva, December 1995):  
The *major issues of the Conference*, preparations for and major issues to be discussed at the Conference, the contribution of International Conferences of the Red Cross and Red Crescent to advances in the humanitarian field.
- Follow-up to the International Conference for the Protection of War Victims (August-September 1993):  
*Meeting of the Intergovernmental Group of Experts for the Protection of War Victims* (Geneva, 23-27 January 1995) and its follow-up.
- Current problems in the field of international humanitarian law:
  - *Preventive action and dissemination.*
  - *Implementation of international humanitarian law:* self-evaluating State reporting systems on compliance with international obligations.
  - *Refugees and displaced persons.*
  - *Water and armed conflicts.*
  - *Armed conflicts at sea.*
  - *Protection of the environment* in times of armed conflict.
- Review Conference of the 1980 United Nations Weapons Convention (September-October 1995).
- Humanitarian policies and operational activities:  
*Coordination* of emergency humanitarian assistance, *preventive measures*, action taken during and after an emergency, *information* and humanitarian activities.
- Thirtieth anniversary of the adoption of the Fundamental Principles of the Red Cross and Red Crescent:  
Reflection on how the Principles are *perceived and applied*, and on how they influence action by governments and by the United Nations.
- History of humanitarian ideas:  
Contribution of *Emperor Asoka Maurya* to the development of humanitarian ideals in wartime; *Edward Mason Wrench*, a British surgeon in the Crimean War; the *philosophy of international law*: Suárez, Grotius and their successors, etc.
- History of the Movement  
*ICRC activities during the Cold War and its aftermath* (1945-1995); *the Review's 125th anniversary* (continuation): milestones in humanitarian law; unity and solidarity within the Movement.

## ARTICLES SUBMITTED FOR PUBLICATION IN THE INTERNATIONAL REVIEW OF THE RED CROSS

The *International Review of the Red Cross* invites readers to submit articles relating to the various humanitarian concerns of the International Red Cross and Red Crescent Movement. These will be considered for publication on the basis of merit and relevance to the topics to be covered during the year.

- Manuscripts will be accepted in *English, French, Spanish, Arabic or German.*

**Texts should be typed, double-spaced, and no longer than 20 pages (or 4,000 words). Please send diskettes if possible (Wordperfect 5.1 preferred).**

- Footnotes (*no more than 30*) should be numbered superscript in the main text. They should be typed, double-spaced, and grouped at the end of the article.
- Bibliographical references should include at least the following details: (a) for books, the author's initials and surname (in that order), book title (underlined), place of publications, publishers and year of publication (in that order), and page number(s) referred to (p. or pp.); (b) for articles, the author's initials and surname, article title in inverted commas, title of periodical (underlined), place of publication, periodical date, volume and issue number, and page number(s) referred to (p. or pp.). The titles of articles, books and periodicals should be given in the original language of publication.
- The *Review* reserves the right to edit all articles before publication.
- Unpublished manuscripts will not be returned.
- Published works sent to the editor will be mentioned in the list of publications received and, if considered appropriate, reviewed.
- Manuscripts, correspondence and requests for permission to reproduce texts appearing in the *Review* should be addressed to the editor.

**Articles, studies, and other signed texts from non-ICRC sources published in the *Review* reflect the views of the author alone and not necessarily those of the ICRC.**

# **26th International Conference of the Red Cross and Red Crescent**

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*IN GENEVA, FROM 4 TO 7 DECEMBER 1995*

## **THE 26th INTERNATIONAL CONFERENCE OF THE RED CROSS AND RED CRESCENT:**

### ***MYTH AND REALITY***

The long awaited 26th International Conference of the Red Cross and Red Crescent has taken on a virtually mythical dimension within our Movement. It has on occasion been compared to the soldier in the famous book by Dino Buzzati (*Le désert des Tartares*) stationed in a fort waiting for the Tartars, beset by a mixture of hope and apprehension.

Let us take a closer look at both prospects.

#### **I. HOPES PLACED IN THE INTERNATIONAL CONFERENCE**

##### **1. Joining forces to help vulnerable people**

The extraordinary technical advances and soaring population growth that have characterized our century have made two things very clear: first, mankind has not succeeded in managing these developments for the benefit of humanity as a whole; and second, there are more and more people living in abject poverty, who are in some way vulnerable or excluded from mainstream society, and all of these need assistance and compassion.

The basic mission of the International Red Cross and Red Crescent Movement to assist these vulnerable people, particularly in times of armed conflict and the aftermath of such events, is therefore as vital today as ever.

The greatest hope placed in the Conference is closely bound up with this situation and the primary duty of the Conference itself: to renew, or

rather to relaunch and promote, dialogue between the States and our Movement in order to determine how concerted efforts can best be made to improve the lot of this vast mass of people who lack basic necessities and for whom life is one long vale of tears. We can and we must do more. We can and we must work together more effectively. The Conference represents an opportunity to discuss these matters and to open up new possibilities.

## 2. Attenuating and preventing crises

Nowadays the international community gives the impression of lurching from one crisis to another as it struggles, with inadequate resources, to patch up ever-widening gaps. Whole nations watch helpless as these crises and their consequences, from which no one is totally safe, run their course. The sad result is that people withdraw into a shell, preferring to ignore what is beyond their ability to control. Compassion is directed toward the short-term, the shocking situations shown in the media, precisely because these situations are shocking and there is a need to feel that one is doing something. Yet all this is to the detriment of those who no longer make the headlines — the forgotten victims — and of long-term planning.

Thus one aim of the Conference is to take up this discussion in more wide-ranging terms, examining what can be done to attenuate the effects of, and if possible prevent, such crises.

### (a) Attenuating the effects of crises

More than anything else, there must be increased respect for international humanitarian law during armed conflicts if crises are to be contained.

The meeting of the Intergovernmental Group of Experts, open to every State, which was convened by the Swiss Government in response to a request made in 1993 by the International Conference for the Protection of War Victims, examined this subject in depth. The expert's recommendations will be submitted for approval to the 26th Conference. Some experts would have preferred that the recommendations be more forceful, understandably in as much as certain of today's problems call for an energetic response from the international community.

These recommendations, which lay stress on preventive action and measures to be taken at national level in peacetime (adoption of national

legislation; increased efforts to spread knowledge of humanitarian law, particularly among the armed forces; the setting-up of interministerial commissions, etc.) could nevertheless bring about an appreciable improvement in the situation *provided that they are taken seriously and followed up by tangible action.* The ICRC, especially, in view of its traditional and statutory role in this field, and also the National Societies and the Federation figure prominently in the recommendations. It is essential that they all measure up to the trust placed in them, that they reaffirm their readiness to respond and take advantage of every opportunity that arises. But another — and perhaps the main — challenge is to encourage States to invest energy and resources in these preventive measures. Although they may not be spectacular, if they are taken seriously they are capable of improving the lot of war victims to a considerable degree.<sup>1</sup>

Improved management and greater understanding of humanitarian action should also contribute to alleviating crises; hence the idea of continuing to give thought to the victims' right to humanitarian assistance and the ethical rules to be observed by the humanitarian organizations providing emergency humanitarian aid. In this connection, the code of conduct drawn up by the Federation in conjunction with the ICRC and various non-governmental organizations is to be submitted to the Conference for study, together with the question of security conditions for humanitarian action.

#### (b) Crisis prevention

Crisis prevention is a much broader field in that it addresses the deep-rooted causes of crises, such as poverty and underdevelopment, uncontrolled population growth, organized crime and corruption.

Our Movement must not overreach itself when attempting to help solve these problems. We do, however, have much to offer, in particular the network of National Societies and the Fundamental Principles.

A network of National Societies covering the entire world (the principle of universality), ready to work for the most vulnerable groups (principle of humanity), without any form of discrimination (principle of impartiality), and without becoming involved in political disputes (prin-

<sup>1</sup>The previous issue of the *Review* (No. 304, January-February 1995, pp. 4-38) gives a detailed account of the meeting of the Intergovernmental Group of Experts and its recommendations.

ciple of neutrality) is precisely what is required to respond to the very real needs of those whose wretched existence is a natural breeding-ground for tension, crises and war.

The mission and role of National Societies vis-à-vis the most vulnerable elements of the population, such as refugees, street children and AIDS sufferers, should be reaffirmed and redefined. The International Conference will also present a unique opportunity to raise awareness of the value of this network, and to enhance cooperation between National Societies and governments. The latter must be made to understand the advantages of supporting the National Societies without encroaching on their independence, without seeking to use them for political purposes, and therefore without undermining their credibility among those they are meant to help.

The Conference will also provide an opportunity for our Movement to give evidence of the energy with which it is pursuing its own as yet unaccomplished mission of developing all National Societies. While promoting the network of National Societies as an essential tool for aiding the most vulnerable, and hence for preventing crises, our Movement must also demonstrate its willingness to promote internal solidarity among its members and to revitalize those National Societies — too numerous alas — which still rest on a shaky foundation.

### **3. Mobilizing the public**

The public at large must understand and support our Movement's work. This understanding is vital since most National Societies depend on voluntary service and private contributions. But it is also necessary because a National Society's public image is a major consideration for its country's government when called on to support its work. A sort of dynamism must thus be developed between efficient action to aid the most vulnerable, public approval of this action, and government support.

The Conference itself is not a driving force; it could even have a negative effect because of the dim view taken by the public of such large and costly gatherings whose impact is hard to assess.

The subject-matter dealt with should serve to draw attention in every country to the tragic fate of victims, and to the action taken by our Movement to help them. It is therefore felt important to discuss specific problems relating to the protection of the civilian population during armed conflicts, abuses committed against women, the suffering endured by

thousands of children, the crucial problem of water shortages and starvation, closely linked to population movements, and the scandalous proliferation of anti-personnel mines. The Conference also offers an opportunity to bear witness, to explain, to arouse compassion, and to encourage rejection of the unacceptable.

## II. APPREHENSION CONCERNING THE CONFERENCE

### 1. Disputes over participation

The stormy and widely publicized debates in 1986 and which led to the expulsion of the South African government delegation have not been forgotten by many National Societies that bore the full brunt of the negative impact of these events on public opinion.

Nor has the crisis resulting from the last-minute indefinite postponement of the Conference due to be held in Budapest in 1991 — because of failure to agree on the form of Palestine's participation — been forgotten by governments, some of whose top-level representatives had travelled to Budapest for no purpose.

Neither the National Societies nor governments would countenance the recurrence of such events, which could cast fundamental doubts on the very *raison d'être* of the Conference.

Even though there is no sure way of guarding against such politically motivated incidents, the threat of which hangs over any assembly bringing together the States, all possible measures must be taken to avoid them. Potential problems are being pinpointed and an increasingly detailed dialogue is under way with governments through a group of ambassadors designated by the Standing Commission of the Red Cross and Red Crescent, as well as with States and other directly concerned groups. As things now stand, no problem appears insoluble, but the difficulties must not be underestimated nor must we fail to investigate every issue thoroughly.

### 2. Political dispute during the Conference

There is a great temptation, especially among States and other groups involved in political or military disputes, to use the International Conference as a forum for expounding their viewpoints and criticizing their adversaries.

Neither the Conference's terms of reference nor its short time-span allow for such confrontations which, given the right of reply, could quickly poison the atmosphere or even call into question all the results achieved. Such squabbles would inevitably have an adverse effect on the spirit of consensus needed for adopting resolutions on the issues discussed.

"Leave your knives in the cloakroom": the famous words of General de Gaulle are entirely applicable to the International Conferences of the Red Cross and Red Crescent, which are not intended to settle specific disputes, or even to discuss them at length.

Hence the importance of convincing all the participants in the Conference to make proper use of it as a forum for debate and for promoting humanitarian action and the protection of the world's most vulnerable people, and not as a sounding board for political causes. This message should be made clear as preparations for the Conference get under way.

Clear and firm control over the discussions at the Conference can also help avert this type of occurrence.

### 3. An abundance of material

Many participants are understandably and legitimately concerned with making the most of the long-awaited opportunity to discuss the topics they hold dear. However, as with a family coming together after a long separation, there is so much to be said that confusion could result. Therefore a selective approach must be taken.

The large number of participants and the short time available impose strict limits on how the Conference will be run.

The Standing Commission has decided to divide the basic work of the Conference into two commissions that will sit simultaneously. Some people would have preferred to have more of them so that more topics could be discussed, but this would mean that many delegations would not be represented on every commission. Consequently those delegations might, at the final plenary session, call into question the work done by the commissions. Moreover, some delegations are not even in a position to take part in two commissions at the same time. It is important that this problem be at least partially solved through regional cooperation and through in-depth dialogue during the preparatory phase.

The Standing Commission has also decided to set a limit of two items of substance per commission so that every delegation wishing to give an opinion will have time to do so. This is another unavoidable constraint that necessitates the setting of certain priorities.

The subject-matter selected so far is rich and abundant, reflecting the breadth of the topics to be discussed.<sup>2</sup>

Participants may also make additional suggestions, though everyone should take due account of the constraints referred to above.

Detailed prior negotiations with all participants will moreover be indispensable so that agreement can be reached in principle on decisions expected to be taken by the Conference on these major topics. This should also enable participants to focus their presentations — which should be brief — on the points they believe to be essential.

So many subjects to cover, so many people and so little time — each participant must take it upon himself or herself to strike a balance between these three parameters, which are immutable.

## CONCLUSIONS

The International Conference of the Red Cross and Red Crescent should give rise to neither apprehensions nor illusions, but must be prepared meticulously so that it can meet the objectives expected of it in an orderly fashion.

The effort to help war victims and the most vulnerable people in our world is a long-term task which will not be completed in our time. Thus we must not ask of the Conference more than it can give.

What we can expect it to do is to highlight intolerable situations and acts, to identify appropriate short- and long-term measures for improving

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<sup>2</sup> The Standing Commission has so far selected four items of substance, namely:

- International humanitarian law: from law to action — Report on the follow-up to the International Conference for the Protection of War Victims;
- Protection of civilian populations in time of war;
- Principles and response in international humanitarian assistance and protection;
- Strengthening the capacity to assist and protect the most vulnerable.

Further details on the topics to be discussed under the above headings are now being prepared and will be presented at the meeting of the Standing Commission on 1 and 2 May 1995. The *Review* will of course keep readers up to date in this regard.

the lot of vulnerable people in such situations, and to make a firm commitment to provide the means necessary to implement these measures.

The Conference must therefore become a mobilizing force for all peoples, at the same time giving them an opportunity to express their solidarity with those who suffer and their wish to agree on specific commitments concerning areas where progress seems possible.

To meet both those objectives, the Conference must be shielded against political or partisan disputes, and governments must do everything in their power to help through their preparations for the event and by their attitude during its proceedings.

The success of the Conference, however, will depend most of all on the attitude of all the components of our Movement.

They are the ones who must mobilize the public at large and the governments of every country worldwide by using the Conference to defend those whom they seek to help, and by creating support and approval for their action.

They are also the ones who must imbue the Conference with the spirit of our Movement, making it a special event that stands apart from run-of-the-mill diplomatic meetings.

Our Movement will meet this challenge if it presents a united front, not by masking its diversity but rather by making the strength of its complementarity evident. It will thus be able to approach the Conference with confidence, viewing it as a constructive and forward-looking event for every participant.

If our Movement goes about its preparations in this frame of mind it will, together with the governments, contribute to the success of this meeting in which so much hope has been placed.

Yves Sandoz  
*Director  
Principles, Law and  
Relations with the Movement*

**Elisabeth Kornblum**

A comparison of self-evaluating  
state reporting systems

— II —

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Geneva, January 1995

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*Note.* The first part of this article was published in the January-February 1995 issue of the *Review* (No. 304, pp. 39-68).

## CHAPTER 7

### DISARMAMENT TREATIES

The reporting procedure on the implementation of disarmament treaties is called "verification". One of the main goals of verification is confidence-building between old adversaries, most notably the USA and the former USSR.

There is no general official and universally-accepted definition of verification. It includes the following components:

- (1) the existence of an obligation, the fulfilment and observance of which must be verified;
- (2) the gathering of information relating to fulfilment of the obligation;
- (3) the analysis, interpretation and evaluation of the information from a technical, legal and political viewpoint;
- (4) assessment concerning observance or non-observance of the obligation, which concludes the actual verification exercise. While the consideration of appropriate reactions to possible violation of an obligation appears to be a logical consequence of this exercise, it is not in itself an integral part of verification.<sup>34</sup>

#### 7.1 Organizations

Two types of practices and proposals can be distinguished in the field of verification of arms control agreements. There are organizations dedicated solely to verification, and there are international organizations with a broader mandate that have received, or will receive a verification or monitoring function. There are only a few organizations, exclusively devoted to verification/monitoring.

The idea of multilateral and international organizations dedicated to or operative in the field of the verification of arms control agreements is currently receiving renewed and heightened interest, under the impetus of the CFE, CSCE and CW negotiations, and of the Gulf War settlement.

Various factors may explain this renewed interest in the role of international organizations:

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<sup>34</sup> U.N. Doc. UNIDIR/92/28, I.

- increased importance is being attached to the verification of disarmament agreements;
- the institution-building process is considered to have a high confidence-building potential;
- economic considerations may motivate advocacy of involvement by international organizations;
- the wish to deny access to certain types of weapons can also be considered a positive factor.<sup>35</sup>

The involvement of international organizations is opposed, however, on the grounds of economic circumstances and the confidentiality of the data. Another major objection is related to the political and legal elements of the verification process: no State is eager to delegate decisions that involve compliance to a third party or to an international body. There is a fine line between fact-finding and the political qualification of facts in an international co-operative environment.<sup>36</sup>

The UN Security Council may intervene in the verification process. The Council may carry out its own investigations and make its own assessments, as it did, for example, when chemical weapons were used in the conflict between Iraq and Iran.

Issues relating to the Gulf War, and the disarmament measures adopted by the Security Council in Resolution 687 (1991), which involve international control, raise problems of a different kind, namely, the consequences and settlement of an international conflict, rather than the verification of certain treaties. The obligations verified are those resulting from the Resolution and not directly from the treaties to which it refers. Certain obligations, for example, those relating to the destruction of missiles, do not fall under the aegis of any specific treaty.<sup>37</sup>

## 7.2 Functions

An international organization can provide technical services and assistance, or it can be a political mechanism for consultation. The former necessitates far greater investment and warrants a more integrated type of organization than does the latter. However, if the latter is really involved in evaluating data in compliance

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<sup>35</sup> C. de Jonge Oudraat, "International Organizations and Verification", in *Verification of Disarmament or Limitations of Armaments: Instruments, Negotiations, Proposals*, UNIDIR, 1992, 207-208.

<sup>36</sup> See note 35.

<sup>37</sup> U.N. Doc. UNIDIR/92/28, 3.

issues, it will sooner or later also require an independent information and data-assessment capability.

Apart from the above, the organizations can have three functions: fact-finding (i.e., the collection and analysis of information and data); political and legal qualification of facts; and enforcement (i.e., responses, including possible sanctions).

The initial provision of data is the responsibility of each State concerned, and usually involves an exchange of data. It may, however, involve some participation by international organizations.

There are two types of fact-finding methods:

**Surveillance** is the systematic observation of some place or activity on a continuous or periodic basis; this may be divided into:

- intrusive methods, i.e., methods implying the presence of either a human agent or an instrument on a State's territory; and
- non-intrusive methods, such as remote-sensing techniques, particularly observation by satellites or perusal of scientific material.

**Reconnaissance** is carried out in the form of missions or *ad hoc* activities, generally aimed at a specific objective which for some reason has attracted attention.

Further distinction may be made between:

- hard/objective methods, i.e., information collected by technical means such as satellites, on-site inspection, or documentary control, and
- soft methods, i.e., information collected through political consultation mechanisms.<sup>38</sup>

Extra information-gathering techniques are a procedure for monitoring the data, possibly with on-site inspection measures, carried out by the parties on the basis of an international instrument. These inspections can be carried out either at random, or in the event of questionable activities. In this context, an international organization may, on occasion, intervene in order to establish the facts,

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<sup>38</sup> See note 35.

as in the case of investigations into the alleged use of chemical or biological weapons.

The monitoring step is accompanied or followed by an information-processing step in which data recorded by the monitoring device are assembled into some appropriate form.

The technical analysis of data collected usually remains the responsibility of each State party; it may be simplified by cooperation among the parties in an *ad hoc* or pre-established context, by international assistance, or by an autonomous international mechanism, although the latter continues to be an exception.

The political and legal qualification of the data is, in principle, also the responsibility of each of the parties concerned; however, it may involve an international dimension, in particular through the machinery of advisory commissions among the parties, or through a genuine collective procedure.

An assessment of the seriousness of a possible breach is made in the same way, although its nature is more directly political. What must be assessed are the implications of the breach for the security of the States concerned. Possible publication and dissemination of the data continue to be at the discretion of the parties concerned.

A new method of verification is "citizens' verification", which in principle resembles the individual complaints procedure under the UN Human Rights Conventions. There is a precedent in US national law, where it is a duty of employees in the defence industry to report companies that are defrauding the government. It would be necessary to provide a duty and protection under the treaty, as well as mechanisms for evaluating information. At the moment it is doubtful whether such a system would receive support from States involved in or contemplating disarmament. -

### 7.3 Treaties past and present

There are currently 24 arms control agreements in force, or recently signed; of these, three provide for the establishment of **international organizations with the specific aim of verifying compliance** with the agreement: the Modified Brussels Treaty of 1954, establishing the Western European Union and the now defunct Arms Control Agency; the Treaty of Tlatelolco establishing OPANAL (Agency for Prohibition of Nuclear Weapons in Latin America, 1976, known by its Spanish acronym); and the Guadalajara Agreement between Argentina and Brazil establishing the Argentine-Brazilian Agency for Accounting and Control of Nuclear Materials (ABACC).

The bilateral (US-USSR) treaties, as well as the multilateral CFE Treaty, opted for a less institutionalized mechanism, namely, the **Consultative Commission**. The Antarctic Treaty, which should also be mentioned, establishes a **Meeting of Contracting Parties**.

The vast majority of multilateral agreements, however, do not provide for the establishment of an international organization or mechanism dedicated to verification, though some of the agreements leave open the possibility for creation of such a mechanism, through a clause permitting resort to "appropriate international procedures".

There are also treaties, such as the Biological Weapons Convention (BWC) and the 1925 Geneva Protocol prohibiting the use in war of asphyxiating, poisonous or other gases and of bacteriological warfare, that have no verification system.

### 7.3.1 Specialized institutions

The Arms Control Agency (ACA) is now defunct, but some remarks can be made on its functioning. It has been, over the years, a relatively independent and autonomous body, even with regard to the Council of the Western European Union, to which the Agency was directly answerable.

The Agency was always relatively small: in 1971, for instances, it had a staff of 52, including 21 of officer grade, and an annual budget of 3,900,000 BFrs.

The most interesting aspect of the WEU verification scheme lies in the fact that an integrated, international body carried out the verification. Most noteworthy in this respect are its experiences in the fields of data exchange and of random inspections.

Since 1984, when Member States decided to reactivate the WEU and to abolish all conventional controls by 1986, the status of the ACA has become unclear. A Director was supposed to be appointed in 1988, but never was. Apparently the Council annual reports no longer include Agency activities, and the Agency has *de facto* ceased to exist.

Compared with ACA, the OPANAL is far more institutionalized and autonomous (integrated). The fact-finding methods at its disposal to verify compliance include:

- semi-annual reports by the parties incorporating statements that "no activity prohibited under the Treaty has occurred";
- special reports by the parties which may be requested by the General Secretary with the authorization of the Council;

- special reports or studies by the General Conference, the Council or the General Secretary;
- special inspections carried out by the Council;
- routine inspections carried out under a safeguards agreement negotiated by each party with the IAEA.

The legal and political evaluation of facts is left to the General Conference. OPANAL has a very small international staff and an annual budget of \$ 316,251. Little is published on the workings of OPANAL, and the proceedings of its General Conference are not widely disseminated. The comprehensiveness — both in terms of functions assigned to it and in terms of procedures and methods it is capable of invoking — as well as the international nature of the organization stand somewhat in contrast to its known activities. The fact that it has not yet had to implement any special procedures, such as inspections or requests for special reports, seems to be a positive sign. Nonetheless, it should not be forgotten that for the major countries of the region the Treaty has not yet entered into force. As in the case of the ACA, political reasons preclude OPANAL's fully exercising its theoretically far-reaching powers.

The ABACC has in principle the same form and objective as the OPANAL, but covers only Argentine and Brazil. It is thought that ABACC will eventually become a part of OPANAL.

### 7.3.2 Other possibilities

There is the Conflict Prevention Centre (CPC), which was established by the Charter of Paris for a New Europe, signed in November 1990. The Centre assists the equally newly-created Council of CSCE Ministers in reducing the risk of conflict and gives support to implementation of the CSBMs, as stipulated in the Vienna Document 1990.

**Consultative Commissions**, as set up for example as a Joint Consultative Group (JCG) for the multilateral CFE Treaty, are another possibility for verification of compliance with a treaty. In theory, the Commissions have no authority whatsoever with respect to the political and legal evaluation of compliance. Formally, they do not make any decisions in this field. Nevertheless, with the antagonism between the US and the USSR retreating into the background, compliance issues lose their explosive political character, and assessment hence becomes more dependent on objective and technical factors.

In 1990 the Treaty on Conventional Armed Forces in Europe (CFE) was adopted, limiting military personnel. Extensive inspections are foreseen in this

treaty as a confidence-building measure between former adversaries and as an opportunity to share sophisticated technologies via East-West cooperative inspection teams.<sup>39</sup> The States agreed that manpower, weapon systems, weapons and production facilities would be monitored.

CFE is a multilateral treaty, but it proceeds from East-West logic and thus has naturally followed the bilateral practice in establishing the JCG. The Group, like the other Commissions, has no fact-finding functions nor does it make any judgements concerning compliance; it is a deliberative body. It provides a forum in which parties may meet, discuss questions arising after data collection and analysis, and through which they may clear up ambiguities. Decisions or recommendations are made by consensus, and deliberations are private.

The Meeting of Contracting Parties was established by Article IX of the Antarctic Treaty and has been operative since 1961. It is composed of the original signatories and of those States that have acceded to the Treaty and that demonstrate their interest in Antarctica, by conducting substantial scientific research activity in the region, such as the establishment of a scientific station or the dispatch of a scientific expedition.

Only members of the Meeting are entitled to verify compliance with the Treaty. Verification (i.e., aerial observation and on-site inspections) may be carried out unilaterally or jointly, and possibly also through the Meeting, which is, *inter alia*, responsible for recommending measures regarding "the facilitation of the exercise of rights of inspection provided for in Article VII of the Treaty". The meeting convenes at regular intervals and is also the place where consultations take place and where data are exchanged.

The verification mechanism installed by the Antarctic Treaty (i.e., the Meeting of Contracting Parties) is of a highly discriminatory character and runs counter to the principle that all States have equal rights to participate in verification of the agreement to which they are parties.

Existing international organizations may also involve themselves with the verification of arms-control obligations, as provided for in the different existing agreements, or deriving from their more general mandates in the field of international peace and security. Examples are the United Nations, or regional organizations such as the Organization of American States (OAS), the Organization of African Unity (OAU), and the North Atlantic Treaty Organization (NATO), or organizations which have a specific technical or legal mandate, such as the

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<sup>39</sup> Sipri Yearbook 1993, *World Armaments and Disarmament*, 606 ff.

International Atomic Energy Agency (IAEA) and the International Court of Justice (ICJ), whose authority is usually confined to technical assistance or fact-finding missions. Organizations in the first category may also derive their authority to intervene from their statutes.

Numerous proposals exist to establish organizations dedicated to non-treaty-specific verification or monitoring. Since they are not related to any specific agreement, they can exercise monitoring functions only by gathering data. No such body has yet been established or is likely to be set up in the near future.<sup>40</sup>

## 7.4 Treaties — proposals

There is the Non-Proliferation Treaty (NPT), regarded as the cornerstone of efforts to prevent the spread of nuclear weapons. It is not global and is not aimed at disarmament but at preventing proliferation.

As its basic system of reporting, NPT requires States to set up a **national verification system**, which reports to a **central documentation centre**, that sends monthly reports to the International Atomic Energy Agency (**international level**). The data are stored in the Safeguards Information System (ISIS), a computerized data bank.

This system is enhanced by containment and surveillance measures, which are usually technical and concentrated on specific nuclear specific issues, for example, surveillance cameras at nuclear installations, and satellites.<sup>41</sup>

The Chemical Weapons Convention (CWC) is a historic multilateral agreement, banning all chemical weapons worldwide, imposing a wide spectrum of inspections to verify the ban, outlawing any use of these weapons and imposing a strict ban on all activities to develop new chemical weapons. The CW Organization has been assigned only fact-finding tasks.

The verification system envisaged for the CWC faces two main challenges not previously encountered on such a large scale and with so many variables. First, there is verification of the measures to meet non-production requirement (e.g., closure of production facilities, destruction and conversion activities) and,

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<sup>40</sup> See note 35.

<sup>41</sup> F. Mautner-Markhof, in R. Kokoski and S. Koulik (eds.) *Verification of Conventional Arms Control in Europe, Technological Constraints and Opportunities* (1990), 251–261.

second, there are measures to ensure that there is no violation as a result of non-prohibited activities.

The international verification organization will be made up of three bodies: a conference of States parties, an executive council and a technical secretariat, supported by an international inspectorate and with national provision of information as the basis for verification activities.

The possibility of requesting challenge inspection, applicable to all activities regulated by the CWC, gives the system an element of deterrence and will also increase confidence in the CWC.

The implementation of the Convention at national and international level will require lines of communication between the various components of the verification organization and the national authority of each state party; such a communications system will probably be multi-purpose.

In general, CWC verification focuses specifically on the civilian chemical industry and the particular destruction undertaking; however, limited use of some applied technologies and verification tools will also be relevant for conventional arms-control verification.<sup>42</sup>

Estimates have been made of the human resources and finances required. The Organization would probably need a total of 603 inspectors (340 would supervise destruction operations and 138 would carry out challenge inspections) and a support staff of 400, making a total of 1,000. Total costs would be around \$160 million.

The Open Skies Treaty, negotiated from 1989 onward, would allow flights by unarmed reconnaissance aircraft over the territories of states. Potentially, the treaty improves openness and transparency, facilitates the monitoring of compliance with existing or future arms-control agreements and strengthens the capacity for conflict prevention and crisis management within the framework of the CSCE. It is a possible method of verification.

The United Nations Register of Conventional Arms, if complied with universally, could develop into a far-reaching international control mechanism which could create unprecedented transparency, both in the international trade in arms and in the national production of arms. It is a framework for dialogue in a specific area of military activity and a basis for future verifiable limitations and reductions.

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<sup>42</sup> T. Stock and J. Matousek, in R. Kokoski and S. Koulik (eds.) *op. cit.*, 264 - 272.

## 7.5 Conclusion

Verification procedures are included in disarmament treaties for the very reason that they should not be included in other treaties, since they make the system inflexible. States do not want disarmament verification systems to change.

Procedures for verification of disarmament are treaty-specific. They are extremely expensive when equipped with an institution for verification, and not very effective without one. Moreover verification works only when the scope of the treaty is limited in time and objectives. Cost-effectiveness and efficiency are only attainable when there is a limited group of like-minded and similarly resourced States, as, for example, in Western Europe. In universal or multilateral contexts, where the discrepancies in means, both technical and financial, are great, costs are often considered prohibitive. Indeed, those States with the strongest financial and technical resources end up paying for a collective effort, with no notable or concrete returns. The proposal for a UN-operated International Monitoring Agency is an example of this kind.

The low level of institutionalization for multilateral treaties is therefore not surprising. Indeed, the ACA and to a greater extent OPANAL and the future CW organization appear to be real exceptions. Furthermore, even if institutionalized, their functions and the methods at their disposal remain limited to fact-finding. On-site challenge inspections remain the solution to everything both in the CWC framework as in the CFE context. The legal/political evaluation of facts, let alone responses, has not yet been considered in negotiations despite increasing recognition of its importance. Nonetheless, States are increasingly recognizing the importance of international consultation on compliance and feel the need to institutionalize this process.

## CHAPTER 8

### ENVIRONMENT TREATIES

Supervision on the implementation of international environmental regulations can be delegated to a specific State, to each State party<sup>43</sup> or to a special international body.<sup>44</sup>

<sup>43</sup> Basel Convention on the Control of Transboundary Movement of Hazardous Wastes and their Disposal, adopted in Basel on 22 March 1989.

<sup>44</sup> 1980 Canberra Convention on Conservation of Antarctic Marine Living Resources (CCAMLR).

An example of delegation of supervision to a specific state is when a ship voluntarily enters a port or off-shore installation the coastal state can investigate.<sup>45</sup>

Most environmental treaties require States to submit periodic reports on the implementing measures that they have taken. The extent of this obligation varies, but it usually covers at least the measures taken by parties towards **implementing their obligations**.<sup>46</sup> Information must also usually be provided to enable assessment of how effectively the treaty is operating. The 1974 Paris Convention for the Prevention of Marine Pollution from Land-based Sources, for example, calls on the parties to report on levels of marine pollution and on the effectiveness of measures adopted to reduce it. The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes requires an annual report on all aspects of transboundary trade and disposal of such substances, and on "such matters as the conference of the Parties shall deem relevant".<sup>47</sup> Similarly, Article 8 of the 1973 Convention on the International Trade in Endangered Species (CITES) requires the parties to maintain records of trade in listed species and to report on the number and type of permits granted. This information must be made available to the public. In some cases, reporting requirements are designed to monitor how well the parties are enforcing a treaty. Thus, the 1946 International Convention for the Regulation of Whaling and the 1991 Protocol to the Antarctic Treaty on Environmental Protection oblige the parties to submit reports by national inspectors concerning infractions, while the 1973 International Convention for the Prevention of Pollution by Ships (MARPOL) calls for reports from national authorities on action taken to deal with reported violations and on incidents involving harmful substances.

Among international supervisory bodies is the Organization of African Unity, responsible for the African Convention on the Conservation of Nature and Natural Resources. The CITES requires States to file reports annually to its Secretariat, like the Montreal Protocol on the Ozone Layer, which also has its own Secretariat.<sup>48</sup>

The information gathered is meant to enable the parties to review and evaluate the impact of a treaty. When the information must be made public, NGOs and other interested groups are also able to monitor progress. The obvious

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<sup>45</sup> Article 218 of the Law of the Sea Convention.

<sup>46</sup> See also: A. Kiss and D. Shelton, *International Environmental Law*, 1991, 98-101.

<sup>47</sup> Article 13.

<sup>48</sup> A. Gallagher, The "New" Montreal Protocol and the Future of International Law for Protection of the Global Environment, in *Houston Journal of International Law*, Volume 14, Winter 1992, No. 2, 337.

weakness is that much will depend on the diligence and accuracy of the reporting authorities. Therefore use is also made of fact-finding methods, research and inspection.<sup>49</sup>

## CHAPTER 9

### OVERVIEW, CHARACTERISTICS AND A POSSIBLE SYSTEM FOR INTERNATIONAL HUMANITARIAN LAW

This chapter is divided in three parts. The first part discusses the concept of a reporting system: what it is, how it functions, its effectiveness, and what it requires in terms of human and financial resources within the framework of international organizations other than the ICRC.

The second part evaluates the characteristics that influence the success or failure of a reporting system. The third part puts forward a possible reporting system, on national measures of implementation of international humanitarian law which already have to be taken in peacetime.

#### 9.1 The concept of a reporting system

Unfortunately, humanitarian agreements tend to be utilized as tools of domestic political rhetoric, allowing States to "reap the public image benefits of signature without bearing the cost of implementation". Even if an intention to comply is present at the time of signature, this is not of itself sufficient to guarantee effective implementation. First, officials or agencies that negotiate agreements are not always those authorized to ratify or otherwise implement them.<sup>50</sup> Second, the accepting government may fall from power and its successor may be unwilling or unable to honour its commitments. Third, a government's administrative capacity may be insufficient to permit discharge of its obligations.<sup>51</sup> One of the goals of a reporting system would be to overcome this problem and end, or at least limit, non-implementation.

<sup>49</sup> P.W. Birnie, A.E. Boyle, *International Law and the Environment*, 1992, 166-167.

<sup>50</sup> This problem is partly overcome in the OECD system, where policy decisions are taken at ministerial level.

<sup>51</sup> See note 48.

A reporting system is part of an implementation system. It supplies information from each State on the operation and implementation of a treaty by that State, it monitors at national level. One way of supplying information is by a self-evaluating report. Self-evaluating reports are assessments of a State's performance by that State, not by other States or by independent agents, such as special rapporteurs or non-governmental organizations, through these may later play a role in verifying the data received.

The information thus obtained may be submitted to an international institution having a supervisory role.

The key tasks of an international supervisory institution are those of gathering information and data by receiving, for example, self-evaluating State reports, of facilitating independent monitoring and inspection, and acting as a forum for reviewing the performance of States or the negotiation of further measures and regulations. Such institutions may thus acquire semi-official law-enforcement and law-making functions. Law-enforcement consists in requiring States to be accountable to other Member States, i.e., imposing a form of collective or communal supervision. To the extent that supervisory bodies are open to participation by other interested parties or NGOs with observer status, this accountability may extend to a wider public.

Supervision of this kind also entails the negotiation and drafting of detailed rules, standards or practices, usually as a means of giving effect to the more general provisions of treaties. Not only does this form of law-making or international regulation facilitate treaty implementation, it also gives treaties a dynamic character and enables the parties to respond to new problems or priorities.

Thus, the combination of regulatory and supervisory functions in the hands of international institutions is of importance in making international agreements operate more effectively. The absence of any provision for institutional supervision or regulation is, by contrast, often a sign that the treaty in question is bound to remain ineffective.

Proper supervision of the operation and implementation of treaty regimes depends on adequate information, much of it supplied by self-evaluating State reports. But international institutions are not confined to a passive role as recipients of information: in many cases they are competent to conduct fact-finding or research. The most assertive method of information-gathering and supervision allows international institutions to undertake inspections (in-country or on-site) to verify compliance with international agreements and standards.<sup>52</sup> Some sys-

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<sup>52</sup> See note 48.

tems have a follow-up procedure, e.g., technical assistance, field missions or field representatives, or there are subsidiary procedures to correlate the information received, for example, inter-state and/or individual complaints procedures, enquiry procedures, also reports from various sources and on-site missions.

## 9.2 Evaluation

The thorough study of various reporting systems highlights certain factors that influence the success of a system. One factor alone is usually not decisive, but combinations of factors can determine the effectiveness of a system. On the basis of these factors, an outline of a possible reporting system on national measures of implementation of international humanitarian law is put forward.

### 9.2.1 Influencing factors

#### *The sensitivity of the subject*

The more sensitive an issue, the less likely States are to report on it. For example, torture and racial discrimination are sensitive issues: no State likes to admit that these occur on its territory. Disarmament and humanitarian subjects are sensitive because they are linked to the national security of a State, always a sensitive issue. Cultural identity used not to be sensitive, but in recent years States and peoples react violently on this subject. Children are an example of an issue that is not sensitive. Every State is eager to report on all it does to help children.

#### *The economic value of the subject*

A subject that may increase prosperity is a positive incentive for reporting. Good examples are the OECD and the WIPO, where States may benefit economically when they share information or adhere to a Convention.

#### *The specificity of the subject*

This aspect is closely linked to the national level on which the reports are produced. The more specific the reporting requirements are the more likely it is that meaningful reports will be produced. For example the ILO, OECD, UNESCO, Disarmament and Environment Conventions deal with very specific issues, but the topics of the CRC, HRC, CESCR and WIPO tend to be more general in scope. When a Convention is broad and general, difficulties in reporting can be reduced by restricting the reporting obligation to very specific subjects, with very specific guidelines.

### *The popularity of the subject in the media*

Media coverage is usually a positive incentive, but linked with a sensitive subject it can become a deterrent to reporting by States.

### *Secretarial support*

This factor is crucial for the functioning of a reporting system. Without a well-staffed secretariat a reporting system is inoperable, since not only the organization of the reporting system, but also its quality and effectiveness, depend on the secretariat. It could be argued that the role of a secretariat is more crucial than that of a supervisory body.

The importance of adequate secretarial support is underlined by the following: the chairpersons of the human-rights treaty bodies have noted that there is a "close link between adequate secretariat resources and the effective functioning of the treaty body system".<sup>53</sup>

### *The flexibility of the reporting procedure*

Reporting systems usually function for decades. As situations and concepts change, the system should be, to a certain extent, adaptable to these changes to avoid becoming obsolete. Therefore it is better to leave the procedural aspects of a system out of a Convention as much as possible, in order to keep the procedure flexible, adaptable and up to date.

### *A permanent body to which to report*

The Convention on the Elimination of the Crime of Apartheid is a good example why an *ad hoc* body does not work. During one of the most important eras in its history, the elections in South Africa, it was not possible to convene the body because it had no members. Accordingly, the establishment of a supervisory body with a permanent character is recommended to ensure continuity.

### *The quality and efficient functioning of a supervisory body*

States are much more keen to report to a body composed of important people, since this lends weight to the body's conclusions concerning a State. High-ranking people also have personal contacts that may persuade a State to submit a report. The Human Rights Committee is a good example: it is considered as a body of high standing that develops human-rights law, and States are willing to report to it.

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<sup>53</sup> A/47/628, annex, para. 20, in E/CN.4/1994/101, pp. 2, 3.

The degree of institutionalization of an international organization depends largely on the existence and/or diversity of its inter-state and/or integrated bodies, which are distinguished by their composition. An inter-state body is composed of representatives of Member States, while an integrated body is made up of independent experts having no obedience to a particular Member State.<sup>54</sup>

Experts should be good, discreet, professional and well informed, and their judgements should be consistent. For them to be well informed, they must have access to information from a variety of sources or be able to initiate information. This heightens the standing of the body and makes States take their obligations more seriously. When bodies take contradictory decisions or appear to be prejudiced, it has an adverse effect on the submission of reports. Political tendencies should be at all times avoided, since they act to the detriment of the system.

### *Follow-up*

The existence of any form of follow-up, either to the state report or to the conclusions from the supervisory body, is a major factor in the effective functioning of the reporting system.

The reaction to a state report can be a report, an opinion or a judgement. These may be public or confidential. The strength of the conclusion can benefit a State, which will have clear guidelines, and it can be used by others to facilitate follow-up.

It is best if the reporting system is combined with other systems of preventive monitoring and ideally also with a system providing a means of reacting to violations at international level. Examples of preventive monitoring are the initiation of inquiries or requests to a body or a person to investigate a situation or a country. Examples of systems that react to violations are individual or inter-state<sup>55</sup> complaints procedures, and investigations by a body or a person, e.g., a fact-finding commission. These systems may be either confidential or public. If the latter, the resulting publicity may constitute additional follow-up.

The availability of technical assistance programmes is also a positive incentive for a State to submit a report, especially to States that are not otherwise able to produce a report or have difficulties with regard to the implementation of a convention.

<sup>54</sup> This point is also put forward by F. Hampson, "Monitoring and Enforcement Mechanisms in the Human Rights Field", in *Expert Meeting on Certain Weapon Systems and on Implementation Mechanisms in International Law*, Geneva 30 May - 1 June 1994, ICRC Report, July 1994, p. 128. But she warns that certain States are believed to attempt to influence "their" independent experts or put only senior government officials forward as candidates.

<sup>55</sup> States do not usually complain of the non-compliance of another State.

### *Admission to an international instrument*

The OECD, the WIPO and the Council of Europe use the mechanism of admission, and so far it appears very effective. States are forced to act on the recommendations of the body if they wish to reach a member status.

### *The existence of a national monitoring body*

At national level there is one crucial factor underlying all the problems of the reporting systems. This is the existence or absence of a national reporting/monitoring structure. This topic will be further discussed in section 9.3.2.

Certain factors, such as the sensitivity and the economic value of a subject, cannot be influenced. On the other hand, the secretarial support, the specificity of the reports demanded, and the follow-up can be influenced and are crucial for the success of a reporting system. These aspects should therefore receive most attention when considering a new reporting system.

## **9.3 Possible focused reporting system on national measures of implementation of international humanitarian law**

In its "Final Declaration" adopted 1 September 1993, the International Conference for the Protection of War Victims (Geneva, 30 August to 1 September 1993) referred to an intergovernmental group of experts to be convened by the Swiss Government, with the task of studying, *inter alia*, "practical means of promoting full respect for and compliance with [international humanitarian law], and to prepare a report for submission to the International Conference of the Red Cross and Red Crescent".

The Meeting's main topic — respect for international humanitarian law (IHL) — may be divided into **three aspects**:

- (1) **universal applicability** of the pertinent international instruments;
  - (2) **prevention of violations of IHL**;
- and
- (3) **observation of IHL and repression of violations.**

### 9.3.1 At the international level

In a reporting system for the ICRC, States should be required to report on:

(a) implementation

- of national measures for the repression/punishment of violations,
- of an internal monitoring system on the observation of IHL by armed forces,
- of a national interministerial committee,
- of cooperation between States for
  - regional seminars organized by the ICRC, and
  - communication of data to a central body (ICRC);

(b) dissemination

- education of armed forces,
- coordination of efforts to spread the knowledge of IHL (e.g., in schools) by, for example, the Ministry of Education.

The information required must be very specific, for example, translations of the Conventions, national laws, then military manuals and, later, updating of national laws. The reports are thus very specific and constitute a focused reporting system, to ensure effectiveness. It has become apparent that a widespread general approach is much less effective than small-scale intensive approaches. This point will be discussed in more detail below.

A feature of the system could be a reporting cycle of four years, to coincide with that of the International Conferences of the Red Cross and Red Crescent. The ICRC would then submit a report to each International Conference on the results of the most recent reporting cycle.

A secretariat is essential for requesting reports, organizing the meetings and distributing the papers, but also for carrying out research into reporting States (e.g., finding earlier reports by these States for other bodies such as the UN, UNESCO, ILO, etc.) and making specific inquiries. It must also be possible for the secretariat to assist States in producing reports. The staff of the secretariat will have to include specialists<sup>56</sup> on humanitarian law, on reporting/monitoring/technical assistance and on advisory services. In existing reporting systems, the expertise within the secretariat is such as to justify reports being submitted, not to a supervisory body, but only to the secretariat. Such a procedure would

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<sup>56</sup> E/CN.4/1994/101, p. 2.

eliminate the judgemental factor almost completely, and the main focus would be on cooperation between the secretariat and the State — an ideal situation for the ICRC, since any hint of criticism of a State can imperil operations in the field and may even endanger the lives of personnel.

The incorporation of such a secretariat within the ICRC would be relatively simple. The secretariat could continue the work already performed by the ICRC, but in a more detailed and specialized way.

Reporting countries could be divided into categories, possibly according to the existing ICRC practice of zoning, whereby a small department of 3 professionals deals with the reports from a single zone. This practice permits specialization on a zone, and lawyers can team up with operational staff to exchange information to their mutual benefit. For example, if there are 186 reporting States, then the six ICRC operational zones would each include 31 States, i.e., 8 States per year would send reports.

An international supervisory body could be established. It should consist of outstanding scholars, members of the armed forces, diplomats and possibly social workers or field delegates/development experts, to get the broadest representation of specializations and interests. The experts could be independent or state representatives. With state representatives, the system is less costly; and another advantage might be that States would feel less attacked by observations coming from state representatives rather than from independent experts. The body itself must be free to decide whether its conclusions will be published or not. It should meet once or twice a year, depending on the volume of reports received. Intervals between meetings should be flexible, and for the body itself to decide.

The creation of a supervisory body has some advantages. One of the weakest points of a reporting system is that States cannot be forced to submit a report. Several psychologically important factors can offset this weakness: States may be pressured into submitting a report by media attention, by a prestigious body, or by intensive follow-up of a report or the request for a report. These factors all influence each other, but the first two points, media attention and the prestige of a body, are closely linked. When there is no supervisory body, the follow-up and the attention of secretariat staff to States must be intensified.

A documentation centre,<sup>57</sup> where crucial documents can be stored and are accessible to the secretariat, and computerized retrieval,<sup>58</sup> are essential to the proper functioning of the system.

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<sup>57</sup> See note 56.

<sup>58</sup> See note 56; the ILO system is computerized; revision is under consideration.

The review of reports could result in advice on IHL, technical assistance or other positive incentives being offered to States. The body would be able to advise on accession to international fact-finding commission/inquiry procedure and thereby help that procedure to become more effective.

The reporting system does not have to function indefinitely: reassessment after two to three four years cycles will show whether it meets expectations. That way the system is kept flexible.

### 9.3.2 At the national level

The fundamental problem of a reporting system is not at international level, but at national level. The crucial nature of this factor cannot be fully appreciated unless the nature of a reporting system is completely understood.

A reporting system is a mechanism whereby States assess the level of implementation of international treaties in, for example, their own national legislation. The reports are not primarily a method of control/verification, but a means of verifying the functioning of state systems of accountability and control, ensuring by independent measurements and inspections that the state is meeting its obligations.

It is vital for a reporting system at international level to be supplied with reports produced at national level. But in order to produce such reports, a State must possess a reporting system at national level, provided with data by specialists within the country who know about national legislation and legal practice, government policy, the armed forces and national security. Unless all this knowledge is used for preparation of an international report, the report is unlikely be satisfactory.

Another aspect is more directly linked to the effectiveness of prevention. The best deterrent to violators is effective prosecution,<sup>59</sup> which requires an effective legal mechanism. The absence or the shortcomings of a legal system can be noted in reports on such matters. These reports, followed up by a technical assistance programme, could go a long way towards making prevention more effective.

There is always the risk that recommendations made by the international supervisory body are not followed up at national level, because no national entity has been mandated to implement the recommendations. The failure by States to follow up the general comments and concluding observations of the experts of international organizations is the reason why most reporting systems are not more effective.

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<sup>59</sup> See note 54.

This problem has been recognized by a number of international organizations. For example, the ILO uses the employers' and workers' associations at national level to check government reports and to supply commentaries. Thus there is a means of determining whether the recommendations of the international body are put into practice. An advantage of this system is that the non-government party or parties know(s) the situation within the country. For the ICRC, the National Societies of the Red Cross and the Red Crescent may fulfil this role by urging States to submit reports, by monitoring their contents and by verifying implementation of the Conventions.

A similar system is developing for the human rights treaties, with specialized NGOs taking over several tasks of the secretariat, supplying extra information on the government reports and using the concluding observations to pressure governments to follow up the recommendations.

The offer of technical assistance can be an important incentive to the reporting States. The aim of assistance should be to set up within the government a system, staffed by local personnel from different backgrounds, to prepare national reports describing the situation in their country.

ICRC delegates in the field would be able to support the National Societies through bilateral steps with governments or by explaining the reporting system.

## CONCLUSION

A reporting system is essential if any progress is to be made in the implementation of international humanitarian law and in preventing violations.

The system can be operated by an independent body of distinguished experts from widely different backgrounds. It must be supported by an adequate secretariat that can develop initiatives when it deems it to be necessary.

At national level, there should be a system for monitoring the situation within a State and for preparing reports to national and international bodies.

A reporting procedure alone however is not sufficient. The Secretariat should be enabled to help a State to derive the fullest benefit from the Conventions it has signed. Technical assistance should be given to those States that ask for it, or that are considered to be in need of assistance by the international body. In addition, the Secretariat should be capable of assessing needs and carrying out missions in the field in order to help States. The National Societies should be integrated into the system of monitoring implementation at national level.

In brief an effective reporting system should be supervised by an independent international body, but it is possible to operate it with a technical secretariat. Incentives to comply with reporting obligations should be provided by assistance programmes at international level, and by encouraging States to set up national monitoring machinery. Adequate human and financial resources are essential to the effectiveness of a reporting system.

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## AN OVERVIEW OF THE REPORTING SYSTEMS

TABLE I

<i>Organisation</i>	<i>Conventions</i>	<i>Personnel of the Secretariat</i>	<i>Body Members</i>	<i>Field offices also working on implementation</i>	<i>Percentage of submitted reports</i>	<i>Budget (per year)</i>
United Nations	6 Conventions 6 Secretaries	10 Professionals 74 Experts (part time)	Independent	Yes	10 - 60%	\$15.000.000
UNESCO	2 Conventions 10 Recommendations	4 Professional 2 Secretaries	----	No	some 10% +/- \$ 800.000 (total budget is \$4.965.000; 6)	
ILO	181 Recommen- dations 174 Conventions	40-50 Professionals 10-15 Secretaries 14-15 Field Officers	Independent: 20 Experts (part time) State Representatives	Yes	some 70% (no information has been supplied by the ILO)	
WIPO	2 Major Conventions	25 Professionals 11 Secretaries	----	Yes	some 70%	min. Sfr. 2.000.000 (probably more than double)
OECD	4 Major Reporting Obligations 25 Working Groups	829 Professionals 662 Other Personnel	State Representatives	No	some 100%	FFR. 1.453.006.097 (1992)
Disarmament	2 Conventions	50/60 Professionals(?)	State Representatives	No	100%	\$ 88.000.000 - 138.000.000

# Refugees and internally displaced persons

## International humanitarian law and the role of the ICRC

by Jean-Philippe Lavoyer

### 1. Introduction

The main purpose of this brief study is to show the importance of international humanitarian law, in particular the Geneva Conventions of 1949 and their Additional Protocols of 1977, for internally displaced persons, i.e. persons displaced within their own country, and to refugees, i.e. persons who have fled their country. Not only does this body of international law protect them when they are victims of armed conflict, but its rules — if scrupulously applied — would make it possible to avoid the majority of displacements.

In addition, attention will be drawn to the particular role played by the International Committee of the Red Cross (ICRC) on behalf of refugees and displaced persons, a role which combines legal intervention with operational action. The mandate of the other components of the International Red Cross and Red Crescent Movement (in short, the Movement) will also be discussed.<sup>1</sup>

After a brief review of international humanitarian law, the ICRC's mandate will be outlined and the problems faced by refugees and displaced persons will be examined from a legal and institutional standpoint.

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<sup>1</sup> In addition to the ICRC, the Movement consists of 163 National Red Cross or Red Crescent Societies and the International Federation of Red Cross and Red Crescent Societies (in short, the Federation).

Finally, a few comments will be made on current deliberations with regard to displaced persons.

## 2. International humanitarian law

International humanitarian law — also known as the law of armed conflict or law of war — consists of rules to protect people in time of war who are not, or are no longer, participating in the hostilities, as well as to limit the methods and means of warfare. It is a 'realistic' law, which takes into account not only requirements stemming from the principle of humanity, upon which humanitarian law is based, but also considerations of military necessity.<sup>2</sup>

The main instruments of humanitarian law are the four Geneva Conventions of 12 August 1949 and their two Additional Protocols of 8 June 1977. The *Geneva Conventions* protect the following people: wounded, sick and shipwrecked members of the armed forces (First and Second Conventions), prisoners of war (Third Convention), and civilians, particularly when they are in enemy territory and in occupied territories (Fourth Convention). The *Additional Protocols* have above all increased the protection of the civilian population from hostilities, while also limiting the methods and means of warfare.

Virtually every State is party to the Geneva Conventions of 1949,<sup>3</sup> and the tendency towards universal acceptance of the Additional Protocols has been confirmed.<sup>4</sup> Protection under international humanitarian law covers two areas:

- international armed conflicts: the Geneva Conventions and 1977 Protocol I are applicable;
- non-international armed conflicts: in situations of internal strife, Article 3 common to the four Geneva Conventions and 1977 Additional Protocol II are applicable.<sup>5</sup>

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<sup>2</sup> We suggest the following works for readers wishing to delve more deeply into this subject: Hans-Peter Gasser, *International Humanitarian Law: An Introduction*, in Hans Haug, *Humanity for All*, Henry Dunant Institute/Haupt, Geneva, 1993, and Frits Kalshoven, *Constraints on the Waging of War*, ICRC, 1991.

<sup>3</sup> As of 31 March 1995: 185.

<sup>4</sup> As of 31 March 1995: 137 States (Protocol I); 127 States (Protocol II).

<sup>5</sup> Common Article 3 contains several fundamental principles applicable in every situation of armed conflict, and is itself a "mini-convention". Protocol II has a higher threshold of application than that of Article 3 inasmuch as the armed opposition must exercise "such control over a part of the territory whereby it can carry out sustained and concerted military operations."

Particularly noteworthy among the humanitarian law treaties covering the use of certain weapons is the 1980 United Nations Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons, one of whose three Protocols restricts the use of mines.

States have a collective responsibility for compliance by other States and armed opposition movements with the Geneva Conventions and Protocols.<sup>6</sup> They also have the obligation to bring persons accused of having committed grave breaches thereof before their own courts, and they may also hand such persons over to another State for trial.<sup>7</sup>

Although humanitarian law and international human rights law are two separate branches of public international law, they have a common goal, namely to protect human beings. Humanitarian law safeguards the most basic human rights in the extreme situations that take the form of armed conflict. Thus these two bodies of law, plus refugee law, should be considered as complementary.

In disturbances and other violent situations not covered by humanitarian law, recourse may be had to international human rights law and to fundamental humanitarian principles, set forth in particular in the Declaration of Minimum Humanitarian Standards adopted at Turku (Finland) in 1990.<sup>8</sup>

The provisions of the Geneva Conventions and Additional Protocols are very specific. The following is a summary of certain especially important rules of conduct which apply to all armed conflicts:

- people who are not, or are no longer, taking an active part in hostilities, such as the wounded and sick, prisoners and civilians, must be respected and protected in all circumstances;
- civilians must be treated humanely; in particular, violence to their life and person is prohibited, as are all kinds of torture and cruel treatment, the taking of hostages, and the passing of sentences without a fair trial;

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<sup>6</sup> Article 1 common to the Geneva Conventions: "The High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances" (emphasis added). See also Article 89 of Protocol I, whereby States undertake to act in cooperation with the United Nations in situations of serious violations.

<sup>7</sup> This involves the principle of universal jurisdiction. Grave breaches (war crimes) are defined in each of the four Geneva Conventions (Article 50 of the First Convention; Article 51 of the Second; Article 130 of the Third; and Article 147 of the Fourth), and in Protocol I (Articles 85 and 11).

<sup>8</sup> Also known as the "Turku Declaration". See *International Review of the Red Cross (IRRC)*, No. 282, May-June 1991, pp. 328-336.

- the armed forces must always distinguish between civilians and combatants, and between civilian objects and military objectives. It is prohibited to attack civilians and civilian objects, and all precautions must be taken to spare the civilian population;
- it is prohibited to attack or destroy objects indispensable to the survival of the civilian population (e.g. foodstuffs, crops, livestock, drinking water installations and irrigation works); it is prohibited to use starvation as a method of warfare;
- the wounded and sick must be collected and cared for; hospitals, ambulances, and medical and religious personnel must be respected and protected; the emblem of the red cross or red crescent, which symbolizes this protection, must be respected in all circumstances; any abuse or misuse thereof must be punished;
- parties to a conflict must agree to relief operations of a humanitarian, impartial and non-discriminatory nature on behalf of the civilian population; aid agency personnel must be respected and protected.

### 3. The ICRC's mandate

Founded in 1863, the ICRC has been mandated by the community of States, under the Geneva Conventions and in recognition of its long-standing practical experience, "to work for the faithful application of international humanitarian law".<sup>9</sup> To this end, it makes appropriate representations to all parties to conflict (i.e. government authorities and armed opposition groups) in order to encourage full respect for this law. It informs them of its observations, offers suggestions and reminds them whenever necessary of their obligations. The ICRC exercises this supervisory mandate by seeking to establish a relationship of trust with belligerents. Although its observations are kept confidential out of a desire to cooperate and to obtain access to the people it endeavours to protect and assist, this principle of confidentiality is not absolute, as evidenced by numerous public denunciations concerning in particular the conflicts in the former Yugoslavia and Rwanda.<sup>10</sup>

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<sup>9</sup> Article 5, para. 2 (c) of the Statutes of the Movement, revised in 1986 by the 25th International Conference of the Red Cross. It should be noted that the States party to the Geneva Conventions attend these international conferences as full members of them and that by participating in the adoption of the Statutes they expressed their desire to allocate specific tasks to the respective components of the Movement.

<sup>10</sup> The ICRC denounces grave violations of humanitarian law when all its representations fail and it is in the interest of the victims to make such a denunciation. See "Action by the ICRC in the event of breaches of international humanitarian law", *IRRC*, No. 221, March-April 1981, pp. 76-83.

So that the ICRC can effectively carry out its duties as the *guardian of international humanitarian law*, the Geneva Conventions grant it right of access to prisoners of war (Third Convention) and to civilians protected by the Fourth Convention.<sup>11</sup> They also grant it a very broad right of initiative.<sup>12</sup> If there is no Protecting Power, the ICRC can moreover act as a substitute for it.<sup>13</sup> The ICRC also has the legal responsibility "to work for the understanding and dissemination of knowledge of international humanitarian law applicable in armed conflicts and to prepare any development thereof" (Article 5(g) of the Statutes of the Movement).

The States have also assigned the ICRC the task of providing *protection and assistance* to victims of armed conflicts and internal strife, and of their direct results.<sup>14</sup> Numerous operational activities have been carried out in this regard, particularly in situations of internal violence (armed conflict and unrest).<sup>15</sup>

The Statutes of the Movement specify the other tasks within the ICRC's mandate, particularly that of upholding and disseminating the Fundamental Principles of the Movement<sup>16</sup> and of ensuring the operation of the Central Tracing Agency.<sup>17</sup>

Finally, the ICRC has the statutory *right to take any humanitarian initiative*, i.e. to offer its services whenever it considers that its specific status as a neutral and independent intermediary can help solve problems of humanitarian concern.<sup>18</sup> This right has the character of customary law.

<sup>11</sup> Article 126 of the Third Convention and Article 143 of the Fourth Convention, which stipulate the following conditions for visits: access to all protected people, right to interview such people without witnesses, no restrictions on the frequency of visits.

<sup>12</sup> Article 9 of the First, Second and Third Conventions; Article 10 of the Fourth Convention; and Article 81 of Protocol I. Regarding non-international armed conflicts, see Article 3 common to the four Conventions.

<sup>13</sup> Article 10 of the First, Second and Third Conventions; Article 11 of the Fourth Convention; Article 5 of Protocol I. In practice, the ICRC most often acts on the basis of its right of initiative.

<sup>14</sup> Article 5, para. 2(d) of the Statutes of the Movement.

<sup>15</sup> For detailed information, see Marion Harroff-Tavel, "Action taken by the International Committee of the Red Cross in situations of internal violence", *IRRC*, No. 294, May-June 1993, pp. 195-220.

<sup>16</sup> The work of the Movement is governed by the following Fundamental Principles: humanity, impartiality, neutrality, independence, voluntary service, unity and universality.

<sup>17</sup> Article 5, para. 2(c) of the Statutes of the Movement. In particular, the Central Tracing Agency seeks to restore and maintain ties among members of families split up by conflicts or disturbances, as well as reuniting members of such families.

<sup>18</sup> Article 5, para. 3 of the Statutes of the Movement.

In situations not covered by humanitarian law, for instance disturbances, the ICRC bases its activities on the universally recognized humanitarian principles, on the "hard-core" human rights which cannot be waived in any circumstances, or on other human rights.

The ultimate embodiment of the ICRC's work is to be found in its role as a *neutral and independent intermediary*. It serves not only as an intermediary between States, but also between victims of armed conflict or internal disturbances and the State or armed opposition movements.

These numerous responsibilities have made the ICRC an organization with a *unique status*. Even though it is itself a private non-governmental organization, the duties and responsibilities assigned to it by international law give it an extremely international scope of activity; it is therefore widely recognized as having an international juridical personality. In 1990, the ICRC was moreover granted observer status in the United Nations General Assembly.<sup>19</sup> The ICRC has also concluded headquarters agreements with many countries in which it operates. These agreements confer immunities and privileges upon it, thus placing it on the same footing as an inter-governmental organization.<sup>20</sup>

## 4. Refugees

### 4.1 Protection under international humanitarian law

Whereas refugee law contains a specific definition of refugee,<sup>21</sup> humanitarian law is very vague and only rarely employs the term. All the same, this does not mean that refugees are neglected by humanitarian law, since they are protected by it when they are in the power of a party to a conflict.

During international armed conflicts, nationals of a State who flee hostilities and enter the territory of an enemy State are protected by the

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<sup>19</sup> Resolution 45/6 of 16 October 1990. See *IRRC*, No. 279, November-December 1990, pp. 581-586.

<sup>20</sup> In particular, headquarters agreements confer legal immunity and the inviolability of premises and archives. ICRC delegates generally enjoy diplomatic immunity.

<sup>21</sup> Article 1 of the Convention relating to the Status of Refugees (28 July 1951); Article 1 of the Protocol relating to the Status of Refugees (31 January 1967). This definition was expanded by the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa (10 September 1969), mainly to include persons having fled from armed conflict or disturbances.

Fourth Geneva Convention as aliens in the territory of a party to the conflict (Articles 35 to 46 of the Fourth Convention). This Convention requests favourable treatment for refugees on the part of the host country; since, as refugees, they do not enjoy the protection of any government, they must not be treated as enemy aliens solely on the basis of their nationality (Article 44 of the Fourth Convention). Protocol I reinforces this rule while also referring to the protection of stateless persons (Article 73 of Protocol I). Refugee nationals of a neutral State who find themselves in the territory of a belligerent State are protected by the Fourth Convention when there are no diplomatic relations between their State and the belligerent State. Article 73 of Protocol I maintains this protection even when diplomatic relations exist.

The Fourth Convention further stipulates that "In no circumstances shall a protected person be transferred to a country where he or she may have reason to fear persecution for his or her political opinions or religious beliefs" (principle of *non-refoulement*, Article 45, para. 4 of the Fourth Convention).

If, during the occupation of a territory, refugees again fall into the power of a State of which they are nationals, they also enjoy special protection: the Fourth Convention prohibits the Occupying Power from arresting, prosecuting or convicting them, or from deporting them from the occupied territory (Article 70, para. 2 of the Fourth Convention).

However, nationals of a State who flee from armed conflict to the territory of a State that is not taking part in an international conflict are not protected by international humanitarian law,<sup>22</sup> unless this State is beset by internal armed conflict, in which case they are protected by Article 3 common to the Geneva Conventions and by Protocol II. The refugees in question are then the victims of two situations of conflict, one in their own country, and the other in the country receiving them.

#### 4.2 The ICRC's role

The Office of the United Nations High Commissioner for Refugees (UNHCR) plays a role of paramount importance in work on behalf of refugees.

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<sup>22</sup> Such situations are frequent, e.g. Afghan refugees in Pakistan and Iran; Iraqi refugees in Iran during the Gulf war; and Rwandan refugees in Zaire, Burundi and Tanzania.

The ICRC considers itself to be directly concerned by the fate of refugees who are *civilian victims of armed conflicts or disturbances*, or of their direct results, i.e. situations covered by its mandate.<sup>23</sup> ICRC action for these refugees depends *inter alia* on their protection under international humanitarian law.

In the case of *refugees covered by humanitarian law*, the ICRC steps in to encourage belligerents to apply the relevant provisions of the Fourth Geneva Convention. At the operational level, the ICRC seeks to obtain access to the said refugees on the basis of this same Convention, and to provide them with any protection and assistance they may need.<sup>24</sup>

As mentioned above, refugees are often *not protected by humanitarian law*, i.e. when the host country is not party to an international armed conflict or is itself not engaged in conflict. In such cases they are protected only by refugee law and benefit from the activities of UNHCR. As a rule, the ICRC then acts only in a *subsidiary capacity* and if it is the sole organization in the area concerned.<sup>25</sup> It withdraws once UNHCR and other organizations take over so that it can carry out tasks more in keeping with its specific role. The ICRC may, however, offer refugees the services of its Central Tracing Agency at any time. It has also developed war surgery programmes for wounded refugees.<sup>26</sup>

The ICRC does, however, feel concerned when refugees encounter major security problems in host countries, particularly when violence or even military operations are directed toward refugee camps near the border.<sup>27</sup> In this case, the ICRC is well placed to perform its role as a

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<sup>23</sup> See Françoise Krill, "ICRC action in aid of refugees", *IRRC*, No. 265, July-August 1988, pp. 328-350.

<sup>24</sup> During the Iran/Iraq conflict, the ICRC thus took care of Iranian refugees in Iraq and even helped with their resettlement in other countries. Following the Gulf war, the ICRC also visited more than 20,000 Iraqis held in the Rafha camp in Saudi Arabia; activities by the ICRC and UNHCR were mutually complementary.

<sup>25</sup> The ICRC intervened on several occasions during the initial phase of an influx of refugees, e.g. in the following cases: Iraqi Kurd refugees in Iran at the end of the Gulf war (1991); Rwandan refugees in Goma (Zaire) and Ngara (Tanzania) in 1994. When UNHCR was not present, the ICRC looked after Mozambican refugees in South Africa and Iranian refugees in Iraq during the Iran/Iraq war.

<sup>26</sup> For example, hospitals for Afghan refugees in Peshawar and Quetta (Pakistan), and for Cambodian refugees in Thailand.

<sup>27</sup> For example, the ICRC launched an extensive operation in aid of Cambodian refugees on the Thai-Cambodian border. See René Kosirnik, "Droit international humanitaire et protection des camps de réfugiés", in *Studies and essays on international humanitarian law and Red Cross principles, in honour of Jean Pictet*, ICRC/Geneva; Martinus Nijhoff Publishers, The Hague 1984, p. 387 ff.

neutral and independent intermediary, and has *concurrent competence* alongside that of UNHCR. With regard to security problems arising in refugee camps particular note should be taken of two factors: the location of such camps in dangerous areas close to the border where they are exposed to hostilities, and the presence of combatants in the camps. International humanitarian law provides some solutions to these problems, though it must first be respected.

When both the ICRC and UNHCR are competent to take action, work by the two organizations is carried out in a spirit of complementarity. Concerted efforts and close coordination result in optimum assistance for victims.

Attention is drawn here to the important role played by the National Red Cross and Red Crescent Societies and their Federation in assistance operations for refugees.

The *repatriation of refugees* is another area of considerable concern to the ICRC. Although it generally does not engage in such operations,<sup>28</sup> the ICRC considers that the States and organizations involved must carefully check that the time and conditions for the refugees' return are right. Owing to its good knowledge of the refugees' country of origin, it can analyse the situation and make recommendations to ensure that refugees return home safely and in dignity. On several occasions the ICRC has warned against the risk of over-hasty repatriations in unstable areas or places where the infrastructure has been destroyed.<sup>29</sup>

The problem of landmines must be borne in mind here, with their devastating injuries that most of all affect the civilian population. These mines not only constitute a reason for displacement, they also seriously impede the reconstruction of war-stricken countries and represent a major obstacle to the return of refugees and displaced persons. The ICRC is of the opinion that only a total prohibition of anti-personnel mines can put an end to this scourge.

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<sup>28</sup> The ICRC does, however, supervise large-scale repatriations, of prisoners of war in particular, such as those that took place between Iraq and Iran in 1990 (approximately 79,000 prisoners), and between Saudi Arabia and Iraq in 1991 (approximately 80,000 prisoners). The ICRC always ensured that each prisoner of war was willing to be repatriated.

<sup>29</sup> The ICRC has spoken out in particular against the repatriation of refugees to Afghanistan, Cambodia, Croatia, Bosnia-Herzegovina and Rwanda. As regards Cambodia, see ICRC Memorandum of 14 November 1990, partially reprinted in Frédéric Maurice and Jean de Courten, "ICRC activities for refugees and displaced civilians". *IRRC*, No. 280, January-February 1991, pp. 9-21.

## 5. Persons displaced within their own country

### 5.1 Protection under international humanitarian law

As previously seen, during armed conflict the civilian population is entitled to an immunity intended to shield it as much as possible from the effects of war. Even in time of war, civilians should be able to lead as normal a life as possible. In particular, they should be able to remain in their homes; this is a basic objective of international humanitarian law.

However, when civilians are forced to leave their homes owing to serious violations of international humanitarian law, they are still *a fortiori* protected by this law. This protection may come from the law applicable either to international or to internal armed conflicts, as both types of conflict may result in displacements of people within their own country.

The protection to which displaced persons, as civilians, are entitled in the event of *displacements due to international armed conflict* is set forth in considerable detail (Protocol I, for example, dedicates a major section to it — Articles 48 ff.). The civilian population is also entitled to receive items essential to its survival (Article 23 of the Fourth Convention; Article 70 of Protocol I). The same holds true for the population of occupied territories (Articles 55 and 59 ff. of the Fourth Convention; Article 69 of Protocol I). In addition, the civilian population cannot be deported from occupied territory.<sup>30</sup> Generally speaking, the civilian population enjoys the fundamental guarantees stipulated in Article 75 of Protocol I.

Civilians *fleeing from an internal armed conflict* enjoy protection very similar to that during international armed conflicts. Although the fundamental principles of this protection have been clearly spelt out, it must be admitted that the rules are less specific. Owing to the predominance nowadays of internal armed conflicts, a fairly detailed description will be given here of the relevant rules.<sup>31</sup>

*Article 3* common to the four Geneva Conventions is the cornerstone of this protection. Although very short, it contains essential principles.

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<sup>30</sup> Article 49 of the Fourth Convention: the Occupying Power may, as an exception, undertake evacuations "if the security of the population or imperative military reasons so demand. Persons thus evacuated shall be transferred back to their homes as soon as hostilities in the area in question have ceased".

<sup>31</sup> See Denise Plattner, "The protection of displaced persons in non-international armed conflicts", *IRRC*, No. 291, November-December 1992, pp. 567-580.

After pointing out that persons taking no active part in the hostilities must be treated humanely in all circumstances, it prohibits the following acts: violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture; the taking of hostages; outrages upon personal dignity, in particular humiliating and degrading treatment; the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the [fundamental] judicial guarantees. The Article also states that the wounded and sick are to be collected and cared for.

These fundamental guarantees are repeated in *Protocol II* which, in addition to the guarantees given in common Article 3, prohibits collective punishments, acts of terrorism, and pillage (Article 4, paras 1 and 2). In addition, the prohibition of outrages upon personal dignity explicitly includes rape, enforced prostitution and any form of indecent assault. Persons deprived of liberty also enjoy additional guarantees (Article 5). Article 6 specifies judicial guarantees, while Articles 7 to 12 stipulate that the wounded and sick, as well as those caring for them, must be respected and protected. Finally, special protection is laid down for women and children (particularly in Article 4, para. 3).

Afterwards, Protocol II stipulates that the civilian population is to be protected from the effects of hostilities (Part IV): "The civilian population...shall enjoy general protection against the dangers arising from military operations" (Article 13). In particular, it must not be the object of attack. Also prohibited are acts or threats of violence intended to spread terror among the civilian population.

In addition, the use of starvation of civilians as a method of combat is prohibited (Article 14). It is also prohibited to attack, destroy or remove objects indispensable to the survival of the civilian population or render them unusable (such as foodstuffs, agricultural areas, crops, livestock, drinking water installations and supplies and irrigation works). Works and installations containing dangerous forces — dams, dykes and nuclear power stations — must not be attacked if such attacks may cause severe losses among the civilian population (Article 15). Cultural objects and places of worship are likewise protected (Article 16).

Protocol II also prohibits *forced movement of civilians*. Such displacements may be carried out only if required for the security of the civilians involved or for imperative military reasons. When such is the case, all possible measures must be taken in order that the civilian population may be received under satisfactory conditions of shelter, hygiene, health, safety and nutrition (Article 17). Although not expressly stipulated, it is understood that such movements may be only temporary.

Finally, whenever the civilian population is deprived of supplies essential for its survival (such as foodstuffs and medical supplies), relief actions "of an exclusively humanitarian and impartial nature and which are conducted without any adverse distinction" are to be undertaken with the consent of the State concerned.<sup>32</sup>

As regards the conduct of hostilities, in 1990 the International Institute of Humanitarian Law at San Remo adopted a "Declaration on the rules of international humanitarian law governing the conduct of hostilities in non-international armed conflicts". It contains general principles on the conduct of hostilities as well as rules on the use of certain weapons.

*Thus international humanitarian law adopts a global approach aimed at safeguarding the civilian population as a whole. The fact that population displacements are only rarely mentioned does not mean that legal protection is lacking. On the contrary, compliance with the law should help to prevent such displacements.*

Evidently there will never be such a thing as 'total' legal protection; even if every rule of international humanitarian law were respected, population displacements would still take place.<sup>33</sup> However, respect for the rules would make it possible to avoid most displacements resulting from war, which is at present the main cause thereof.

*It is consequently essential that States not yet party to the Geneva Conventions and their Additional Protocols should accede to these instruments, and that belligerents should fulfil their obligations and scrupulously apply the rules they have solemnly undertaken to respect.*

The obligation to spread knowledge of humanitarian law, in particular among the armed forces but also among the population at large, can never be overstressed. *Instruction in the rules of international humanitarian law is a major preventive measure.*

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<sup>32</sup> Article 18, para. 2 of Protocol II. When these conditions exist, the State must in principle give its consent. As regards relief actions under humanitarian law, see Denise Plattner, "Assistance to the civilian population: the development and present state of international humanitarian law", *IRRC*, No. 288, May-June 1992, pp. 249-263.

<sup>33</sup> The civilian population can suffer collateral or incidental damage loss (see Article 51, para. 5 and Article 57, para. 2 of Protocol I). Attacks are prohibited, or must be stopped, if the loss of human life among the civilian population would be excessive in relation to the concrete and direct military advantage anticipated (principle of proportionality).

## 5.2 The ICRC's role

The whole problem of internally displaced persons calls for a dual response from the ICRC: first, as promoter and guardian of international humanitarian law and, second, as an operational agency providing protection and assistance to victims of armed conflicts and internal disturbances.<sup>34</sup>

By combining approaches to belligerents to promote respect for the law with its operational activities in the field, the ICRC above all seeks to create conditions whereby the civilian population can remain in their homes whenever possible, in safety and dignity. *Prevention* is thus a major aspect of its work. The magnitude of population displacements is evidence of how arduous such a task is, and how difficult it is to diminish the arbitrary treatment of civilians and the excesses committed against them. Humanitarian action nonetheless plays a significant role, helping to curb wanton violence and prevent the situation from deteriorating further.

As victims of armed conflicts or disturbances, internally displaced persons unquestionably come under the mandate of the ICRC. They consequently enjoy the general protection and assistance it affords to the civilian population, which can be briefly summed up as follows:<sup>35</sup>

- protection of the civilian population; respect for international humanitarian law and humanitarian principles;
- visits to persons deprived of their freedom;<sup>36</sup>
- emergency medical assistance and rehabilitation (war surgery, orthopaedics, support for medical facilities, etc.);
- assistance in public health programmes, particularly as regards the supply of drinking water;
- emergency food aid and other assistance to cover basic needs (e.g. material to make shelters, hygiene products, the distribution of seed, and agricultural tools and fishing tackle, livestock vaccination);<sup>37</sup>

<sup>34</sup> See Maurice and de Courten, *op. cit.*

<sup>35</sup> See Harroff-Tavel, *op. cit.*

<sup>36</sup> The purpose of these visits is to verify the detention conditions and the treatment of detainees. In 1994, the ICRC visited more than 99,000 persons held in 2,470 places of detention in 58 countries.

<sup>37</sup> In 1994, the ICRC distributed 167,000 tonnes of supplies of all kinds in 45 countries.

— activities to restore contact among family members separated by war or disturbances, or to facilitate their reunification.<sup>38</sup>

The ICRC also offers its services to facilitate communication between parties to conflict (e.g. by passing on messages of a humanitarian nature) or the conclusion of humanitarian agreements (e.g. special agreements to extend the applicability of international humanitarian law to an internal armed conflict, or to make it possible to evacuate the wounded).

For the ICRC the concepts of protection and assistance are closely linked and even inseparable.<sup>39</sup>

Most of the ICRC's work for displaced persons is carried out during armed conflicts. Thanks to its recognized right of initiative and its neutral and independent status, the ICRC is often best placed to take action during hostilities, i.e., in situations where the dangers and consequently the humanitarian needs are the greatest. Its specific nature and virtually permanent contacts with all parties to conflict generally enable it to obtain access — whether in government territory or in areas held by armed opposition groups — to the victims it is mandated to protect and assist. It cooperates as much as possible with National Red Cross and Red Crescent Societies.

Recent ICRC activities in aid of displaced persons, particularly in Rwanda and Chechnya, have been considerable. In *Rwanda*, the ICRC has cared for more than one million civilians, most of them displaced persons.<sup>40</sup> In *Chechnya*, the ICRC has assisted hundreds of thousands of people, many of them displaced. In both cases, as in general, its activities were not confined to these groups of people but formed part of a whole range of efforts on behalf of the civilian population.

Questions may arise as to the advisability of recourse to measures intended to improve protection of the civilian population, in particular displaced persons, against hostilities. The creation of *special protected*

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<sup>38</sup> In 1994, the Central Tracing Agency delivered 7,721,650 Red Cross messages to and from separated family members.

<sup>39</sup> See Jean-Luc Blondel, "Assistance to protected persons", *IRRC*, No. 260, September-October 1987, pp. 451-468.

<sup>40</sup> The ICRC's material aid, essentially in food and agricultural rehabilitation, is also directed toward the particularly vulnerable members of the local population and, as the need arises, toward returnees. The ICRC also carries out the following work in Rwanda: visits to persons deprived of liberty; restoring family ties, particularly by registering unaccompanied children; rehabilitation of the drinking water supply system; and basic medical programmes.

*zones* has thus been proposed, such as those provided for in international humanitarian law<sup>41</sup> or inspired by it. Practical experience has shown, however, how difficult it is to set up such areas, and especially to ensure their safety, which requires strict control over the area and therefore a considerable deployment of personnel. It has also shown that a safety zone will be all the more effective when it has been accepted by all parties concerned. Moreover, a protected zone that has been imposed on the parties fails to meet the requirements of international humanitarian law. The ICRC has managed — in cases of extreme urgency and with the consent of all parties — to render limited areas neutral by placing them under its own control.

Great caution must be taken when creating safety zones, for they tend to create a false sense of security among those they are meant to protect. In certain cases, they may also have the undesired effect of placing those outside the zone in even greater danger, detracting from the effectiveness of the international humanitarian law which is destined to protect the civilian population as a whole, without discrimination.

Care should also be taken to ensure that such measures do not limit the right of displaced persons to leave their country and request asylum abroad.

## 6. The International Red Cross and Red Crescent Movement

Any description of activities to assist refugees and displaced persons must also take into consideration the work of the Movement's other components, namely the National Red Cross and Red Crescent Societies and the Federation. The Movement has in fact adopted a specific policy for these two categories of people.

The Movement's concern for them dates back a long time. However, it was not until 1981, at the 24th International Conference of the Red Cross

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<sup>41</sup> As regards protection of civilians, see Article 14 of the Fourth Convention ("Hospital and safety zones and localities"), Article 15 of the Fourth Convention ("Neutralized zones"), Article 59 of Protocol I ("Non-defended localities"), and Article 60 of Protocol I ("Demilitarized zones"). For a more detailed study of the matter, see Yves Sandoz, "The Establishment of Safety Zones for Persons Displaced within their Country of Origin," presented at the Multi-choice Conference on International Legal Issues arising under the United Nations Decade of International Law, Doha, Qatar, 22-25 March 1994.

held in Manila, that the role of the Movement was clearly defined for the first time, with the adoption of a resolution and a 10-point "Statement of Policy" (Resolution XXI and Annex). Of particular note therein is a general appeal to the Movement to help refugees, displaced persons and returnees. It is also specified that all action undertaken must be in strict accordance with the Fundamental Principles of the Movement.

In addition, the components of the Movement are invited to cooperate with UNHCR and other institutions and organizations working on behalf of refugees. Provision is made for consultations with UNHCR and for the coordination of activities to ensure that efforts will be complementary. In order to ensure consistency in the Movement's work, National Societies are expected to inform the ICRC and/or Federation of any negotiations likely to lead to an agreement with UNHCR. The ICRC and/or Federation should be associated with the Society in the negotiations and concur with the terms of agreement.

This Statement of Policy also demonstrates the specific protection the ICRC offers as a neutral and independent institution. Furthermore, the role of its Central Tracing Agency is stressed; in cooperation with National Societies, the agency seeks to facilitate the reunification of dispersed families, the exchange of family news and the tracing of missing persons.

The 25th International Conference, held in Geneva in 1986, reaffirmed the role of the Movement in aid of refugees, displaced persons and returnees (Resolution XVII), as did the Council of Delegates<sup>42</sup> at its 1991 meeting in Budapest (Resolution 9), and in 1993 in Birmingham (Resolution 7). The Resolution adopted in Birmingham "invites the components of the Movement, in accordance with their respective mandates...to continue to act vigorously in favour of refugees, asylum-seekers, displaced persons and returnees".

The Movement's efforts in favour of displaced persons are centred around the specific roles of each of its components. Respect for these roles, in a spirit of complementarity, is indeed the best guarantee for effective action. The Statutes of the Movement and the Agreement concluded in 1989 between the ICRC and the League (now known as the Federation) provide the general framework for the various activities. Broadly speaking, the assignment of tasks is as follows:

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<sup>42</sup> The Council of Delegates is the statutory body where the components of the Movement meet to discuss matters which concern the Movement as a whole.

- In situations of armed conflict, and whenever the presence of a specifically neutral and independent institution is necessary, the ICRC assumes the general direction of the operation;<sup>43</sup>
- In situations of peace, the Federation coordinates the relief work of the National Societies following any major disaster.<sup>44</sup>

A large number of National Societies have now set up major programmes for refugees, displaced persons and returnees, often with the support of the Federation. Many of these Societies act as implementing agencies for UNHCR or other United Nations organizations. Such cooperation must be guided by the Movement's Fundamental Principles, a requirement which is all the more important in a world where neutral and impartial action is in constant danger of politicization.

## 7. Current challenges

The problem of population displacements, whether the people concerned are refugees or persons displaced within their own country, presents a big challenge for the international community. Aspects concerning displaced persons will be considered here.<sup>45</sup>

First of all there is the important work being carried out by Mr Francis Deng, Representative of the UN Secretary-General on Internally Displaced Persons.<sup>46</sup> Input on this subject has been provided by the Human Rights Commission, the UN Department of Humanitarian Affairs,<sup>47</sup> UNHCR, the Centre for Human Rights and many non-governmental organizations, some of which have been assigned the task by Mr Deng of investigating certain legal<sup>48</sup> and institutional<sup>49</sup> aspects of the phenom-

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<sup>43</sup> Article 5, para. 4 of the Statutes of the Movement; Articles 18 and 20 of the 1989 Agreement.

<sup>44</sup> Article 19 of the 1989 Agreement.

<sup>45</sup> The current number of displaced persons is estimated to be around 25 million, or even more, although the concept of 'displaced person' is not clearly defined. The causes of displacement vary widely: armed conflict, disturbances, repression, natural disasters, socio-economic conditions, and infrastructural projects (e.g. dams).

<sup>46</sup> See in particular his latest report to the Commission on Human Rights, dated 2 February 1995 (ref. E/CN.4/1995/50).

<sup>47</sup> The Department of Humanitarian Affairs has created an inter-agency work group on displaced persons.

<sup>48</sup> The Ludwig Boltzmann Institute for Human Rights (Austria), the American Society of International Law and the International Human Rights Law Group (United States).

<sup>49</sup> The Refugee Policy Group (United States) and the Norwegian Refugee Council (Norway).

enon of displaced persons. Many States are also joining in. As the subject is of great importance to the ICRC, it is taking an active part in the debate as well, in particular through dialogue with the Representative of the Secretary-General.<sup>50</sup>

Careful consideration by the international community of how to address the growing problem of displaced persons is essential. Present efforts to increase awareness are commendable, valuable as they are in drawing attention to a matter of serious humanitarian concern. Current ideas on the subject are reviewed below.

To begin with, what should be done to improve *humanitarian action* on behalf of displaced persons? In view of the large numbers and vast needs of these people, greater cooperation between the humanitarian agencies, particularly UN bodies and non-governmental organizations, is of paramount importance. This cooperation must be increased in a spirit of complementarity and must take their respective mandates into account. To be truly neutral and impartial, humanitarian action must moreover be independent of all political and military considerations, for only then is it possible to reach all victims.<sup>51</sup> States must also recognize that humanitarian action has its limits; although indispensable, it is but a temporary remedy for problems that can be solved only by political means, with assistance from the international community when required.

The question then arises as to a possible *development of the law*. This is a delicate matter, for there are already many legal regulations, and, when new rules are created (e.g. a convention on displaced persons), care must be taken not to undermine the existing law. Another moot point is the advisability of creating rules aimed solely at protecting displaced persons, which could result in discrimination against other victims who also deserve to be protected. The traditional humanitarian law approach, based on needs arising from a given situation (armed conflict), therefore appears preferable to an approach centred on specific categories of people in every situation.

Proposals intended to reaffirm certain essential principles and rules of humanitarian law and human rights law in order to improve protection of displaced persons must on the other hand be encouraged, provided that

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<sup>50</sup> See the ICRC's reply November 1992 to Mr Deng which is reproduced in this issue of the *IRRC*, pp. 181-191.

<sup>51</sup> See *Code of conduct for the International Red Cross and Red Crescent Movement and non-governmental organizations (NGOs) in disaster relief*.

the existing law is upheld and not weakened (there has been talk of a set of principles, a code of conduct or a declaration). It is true that in situations not covered by international humanitarian law, existing law perhaps does not yet provide optimum protection for the civilian population, and consequently for displaced persons, although the power to waive certain human rights at times of exceptional public danger is limited. It should be noted that population displacements are mentioned in Article 7 of the Turku Declaration.

In general, however, efforts by the international community should be concentrated first and foremost on *improved implementation of international humanitarian law* by all belligerents. This should help to bring about a considerable reduction in the number of displaced persons and refugees.<sup>52</sup>

**Jean-Philippe Lavoyer** was born in 1950 in Berne (Switzerland), where he obtained his degree as a barrister in 1976. From 1984 to 1988, he was an ICRC delegate in South Africa, Somalia and Afghanistan. After three years with the ICRC's Legal Division in Geneva, he was assigned to Kuwait (1991-1994). He has now rejoined the Legal Division, and continues to carry out regular missions, particularly for the purpose of disseminating international humanitarian law.

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<sup>52</sup> In an effort to increase respect for humanitarian law, in 1993 the Swiss Government, at the ICRC's suggestion, organized the International Conference for the Protection of War Victims. The next International Conference of the Red Cross and Red Crescent, to be held in Geneva in December 1995, will also discuss measures to be taken to increase this respect.

# The ICRC and internally displaced persons

*In 1992, the United Nations Commission on Human Rights adopted a resolution on persons displaced within their own countries, pursuant to resolution 1991/25 on the same subject, whereby the United Nations Secretary-General was requested to gather the views of governments and of the intergovernmental and non-governmental organizations concerned and to report to the next session.*

*Mr Francis Deng, subsequently appointed Special Representative of the Secretary-General on internally displaced persons, asked the ICRC for its opinion on the matter. The ICRC's reply, given in November 1992, remains valid today and is reproduced below in a slightly modified form.*

## 1. Introduction

According to the four Geneva Conventions of 1949 and the 1977 Protocols additional thereto, the mandate of the International Committee of the Red Cross (ICRC) applies in both international and non-international armed conflict situations. The States party to the Geneva Conventions have also recognized the ICRC's right to propose activities in behalf of victims of internal strife, by adopting the Statutes of the International Red Cross and Red Crescent Movement (Article 5, para. 2d, of the Statutes).

For the purposes of this article, therefore, the ICRC will confine its considerations to situations of armed conflict and internal strife, it being understood that international humanitarian law applies only to armed conflict situations.

## 2. Causes of displacement of persons

Whenever military operations are not confined to the front line, they are liable to cause population movements. However, the ICRC has observed that violations of international humanitarian law very frequently lead to population displacements, or exacerbate the phenomenon.

For instance, civilians flee combat zones on account of indiscriminate attacks by belligerents. Or, subjected to harassment and caught in the firing line between the belligerents, they attempt to escape the abuses of power of which they are the victims. When they move, they lose access to their normal sources of supply. This may in itself be a primary cause of famine; or famine may develop because the belligerents do not take the necessary steps to allow the delivery of relief to these persons. When belligerents deliberately impede the delivery of relief supplies essential to the survival of the civilian population, their conduct runs counter to international humanitarian law, in particular the provisions prohibiting the use of starvation of civilians as a method of warfare (Articles 54 of Protocol I and 14 of Protocol II). Such impediments to the delivery of relief may in turn cause further population displacements.

The indiscriminate use of landmines must also be taken into consideration when analysing the causes of the displacement of civilians during armed conflict. Indeed, mines kill 800 people each month, most of them women, children and farmers. According to conservative estimates, there are still 85 to 100 million mines lying in wait in 62 countries. Even under ideal conditions, when the layout of minefields is known and is even mapped, it takes a hundred times as long to remove mines as to lay them. By cutting farmers off from their fields, landmines force them to leave their villages and thus they swell the ranks of persons displaced by war.

Authorities faced with a non-international armed conflict may decide to transfer a civilian or group of civilians from one place to another within the national territory. In this case, the authorities' decision complies with international humanitarian law only if the security of the civilians involved or imperative military reasons (our underlining) so demand. Even then, the decision is in line with humanitarian standards only if all possible measures are taken "*in order that the civilian population may be received under satisfactory conditions of shelter, hygiene, health, safety and nutrition*" (Article 17(1) of Protocol II).

Violations of international law may be the cause of large-scale population movements and at the same time betray a deliberate policy on the part of the authorities to provoke such movements. In any event, a policy

involving mass displacement of groups of population, like the policy of "ethnic cleansing", is not consistent with respect for humanitarian law. It should be noted in this connection that Article 3 common to the four Geneva Conventions forbids parties to a conflict to have recourse to discriminatory treatment founded on "*race, colour, religion or faith, sex, birth or wealth, or any other similar criteria*".

Although organization and discipline among combatants are liable to enhance respect for humanitarian law, it must be stressed that the provisions of common Article 3, which are applicable to all types of armed conflict,<sup>1</sup> and particularly non-international armed conflict, lay down rules of conduct which stem from the duty to act humanely and which do not require any particular legal or political mechanism for compliance. To avoid any further regression of the minimum standards of civilization, such compliance must continue to be demanded at all times.

### 3. Needs of displaced persons

Human dignity is generally very severely affected by the fact of having to leave one's home on account of events associated with armed hostilities or other forms of violence, because of the utter dependence in which the displaced persons then find themselves. States should therefore adhere to a policy designed to *prevent displacements*. For this, much greater importance will have to be attached to respect for humanitarian law.

States at peace should — as indeed they are required to do by the Geneva Conventions — spread knowledge of the humanitarian rules, notably on account of their educational value, which is at least on a par with that of the rules of human rights. For countries affected by an armed conflict, efforts should focus on restoring the resolve of political and military leaders to respect the minimum standards of humanity which the Geneva Conventions endeavour to preserve. Securing respect for humanitarian law should be seen as a necessary step towards the restoration of a peace which will not be undermined by the memory of disproportionate suffering. Attention should also be given to situations which are not governed by a protective regime such as that provided by humanitarian

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<sup>1</sup> See Judgment by the International Court of Justice in the case concerning military and paramilitary activities in and against Nicaragua, Reports of Judgments, Advisory Opinions and Orders, p.104, para. 218.

law, firstly because humanitarian law does not apply in such cases and furthermore because the international law of human rights is often suspended, at least partially, by the use of derogation clauses.<sup>2</sup>

In summary, the prevention of displacements calls for rules which would avert, or at least limit, population movements, an implementation system geared to the problems which those rules are intended to solve (see section 5 below), and a policy on the part of States allowing the rules to produce the desired effects.

The ICRC has in any event observed that the needs of displaced persons go much further than mere material relief. Action must be taken ahead of displacements. Its purpose must be to shelter people from the hostilities, not by displacing them but by making sure that military operations comply with the restrictions laid down by law. It must combat all conduct which violates the identity of a population group by abuses of power contrary to the rules of international law. In non-international armed conflict, special agreements between the parties may raise standards of behaviour and offer solutions derived from the law applicable to international armed conflicts.

Humanitarian law applicable to non-international armed conflicts does not make any provision for protected areas such as the hospital and safety zones mentioned in Article 14 of the Fourth Geneva Convention and the neutralized zones mentioned in Article 15 of the same text. The question arises whether the establishment of similar zones should not be encouraged in situations of internal armed conflict. The main problem is obtaining the cooperation of the authorities concerned; otherwise such zones are frequently subject to attacks, with often tragic results for the persons whom they are supposed to protect. It is therefore difficult to advocate general solutions; their relevance must be examined on a case-by-case basis, taking the specific circumstances into account. Similar difficulties arise when attempts are made to reserve for exclusively humanitarian purposes communication channels used for the transport of relief supplies (humanitarian corridors). In practice this is almost impossible. The establishment of such corridors can furthermore have negative effects on areas other than those they serve. Any proposed solution must therefore be carefully examined in terms of its advantages and disadvantages in the given context.

<sup>2</sup> See the "Declaration of Minimum Humanitarian Standards" published in the *International Review of the Red Cross*, No. 282, May-June 1991, p. 330 ff. This Declaration was circulated within the Sub-Commission on Prevention of Discrimination and Protection of Minorities on 12 August 1991 as Document No. E/CN.4/Sub.2/1991/55, and in 1994 was submitted by resolution to the Commission with a view to its finalization and possible adoption.

In regard to the phenomenon of displaced persons, therefore, the ICRC believes that a combined protection and assistance strategy is required. The provision of relief, intended to help people survive by meeting their most urgent needs, should never be regarded as a substitute for efforts to eradicate the causes of displacement, through representations to the civilian and military authorities and practical activities in the field. In addition, all possible steps must be taken, when launching a relief operation, to avoid creating a state of dependence and to help the people receiving assistance to regain their self-sufficiency.

#### **4. Law applicable to displacement of persons within the national territory**

International humanitarian law protects the victims of international and non-international armed conflicts. The four Geneva Conventions of 1949 and Additional Protocol I, in addition to customary law, apply to international armed conflicts. Article 3 common to the four Geneva Conventions of 1949, and Additional Protocol II, as well as the relevant customary rules, apply to non-international armed conflicts. At 31 December 1994, 185 States were parties to the Geneva Conventions of 1949, 135 to Protocol I and 125 to Protocol II.

As internally displaced persons are in principle civilians, they are protected before, during and after their displacement by all the rules that protect civilians in an armed conflict situation.

Nowadays, most such situations are non-international in nature. On account of their characteristics — no front line, combatants mingling with the population, breakdown of political, economic and social structures, etc. — these situations are more likely to cause population movements than are international armed conflicts. In addition, in international armed conflict situations, it often happens that the States at war impose restrictions on the movements of people residing on their territory.

Nevertheless, displacements can occur within the national territory of a State which is party to an international armed conflict.

A State may have to face, within its borders, clashes which reach the intensity of an internal armed conflict; this conflict will then be superimposed upon the international armed conflict. In such circumstances, the humanitarian problems causing or resulting from population movements will have to be dealt with in part by application of the rules relating to non-international armed conflicts. Article 75 of Additional Protocol I,

which, within the framework of an international armed conflict, applies to anyone affected by such a situation, may also cover some of the problems that can arise in the context described above.

If the international armed conflict is not accompanied by a non-international armed conflict, then only the rules applicable to international armed conflict will come into play.

For the sake of clarity, a distinction has to be drawn between the rules applicable to international armed conflicts (A) and those applicable to non-international armed conflicts (B).

### A. Rules applicable to international armed conflicts

It should be pointed out first of all that humanitarian law governing international armed conflicts contains a large body of *rules applicable to the conduct of hostilities* (see Part II of the Fourth Geneva Convention and Parts III and IV of Protocol I).

One of these provisions, Article 54 of Protocol I, prohibits starvation of civilians as a method of warfare. Paragraph 2 of the provision states that it is prohibited "*to attack, destroy, remove or render useless objects indispensable to the survival of the civilian population, such as foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations and supplies and irrigation works, for the specific purpose of denying them for their sustenance value to the civilian population or to the adverse Party, whatever the motive, whether in order to starve out civilians, to cause them to move away, or for any other motive*" (our underlining).

In its relations with the inhabitants of an occupied territory, the Occupying Power must respect the *prohibition of forcible transfers* laid down in Article 49 of the Fourth Geneva Convention.

In its relations with persons protected under the Fourth Geneva Convention (see Article 4 of that Convention and Article 73 of Protocol I), a State party to an international armed conflict must respect all *the rights of those persons, whether political or social, and whether relating to judicial guarantees, to the manner in which they are to be treated, to their physical integrity or to their safety*, laid down in Part II and Sections I and II of Part III of the Fourth Geneva Convention.

In its relations with the inhabitants of an occupied territory, the Occupying Power must respect all *the rights of those persons, whether political or social, and whether relating to judicial guarantees, to the manner in which they are to be treated, to their physical integrity or to*

*their safety*, laid down in Part II and Sections I and III of Part III of the Fourth Geneva Convention.

In its relations with persons who are not protected persons under the Fourth Geneva Convention but are affected by the situation, a State party to an international armed conflict must respect *all the rights specified in Article 75 of Protocol I.*

Pursuant to Articles 23, 55 and 59 ff. of the Fourth Geneva Convention and Articles 68 ff. of Protocol I, *the civilian population*, whether in an occupied territory or on the national territory of a belligerent State, and even when the latter is subjected to a blockade, *must be provided with supplies essential to its survival*. These supplies must, if necessary, be delivered to them by international relief operations. Neither the States implementing the blockade, nor the enemy State, nor the Occupying Power may oppose relief actions intended to provide the civilian population with supplies essential to its survival and which comply with the requirements laid down under humanitarian law, and in particular the stipulation that relief actions must be humanitarian, impartial and non-discriminatory. The Fourth Convention also provides, in Articles 108 ff., for relief shipments to civilian internees.

*Women, children, the elderly and the disabled* make up most of the civilian population and as such already enjoy the protection of humanitarian law. Moreover, such persons may also fall into the category of the wounded and sick within the meaning of Article 8(a) of Protocol I, and as such benefit from all the provisions of humanitarian law which organize protection of the wounded and sick in time of war.

Finally, Articles 76 and 77 set out some of the many specific measures which States must take to ensure special protection for women and children.

## B. Rules applicable to non-international armed conflicts

A closer look should be taken at the various points mentioned under A above.

Like the law relating to international armed conflicts, that relating to non-international armed conflicts contains *rules applicable to the conduct of hostilities*.<sup>3</sup>

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<sup>3</sup> See, on this point, Denise Plattner, "The protection of displaced persons in non-international armed conflicts", *International Review of the Red Cross*, No. 291, Nov.-Dec.1992, pp. 567-580, pp. 570-571.

As in the rules applicable to international armed conflict, starvation of civilians as a method of combat is also prohibited in non-international armed conflict, in the following terms:

*"Starvation of civilians as a method of combat is prohibited. It is therefore prohibited to attack, destroy, remove or render useless, for that purpose, objects indispensable to the survival of the civilian population, such as foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations and supplies and irrigation works"* (Article 14 of Protocol II).

*Forced displacements* are covered by Article 17(1) of Protocol II.

*Political and social rights, whether relating to judicial guarantees or to the manner in which non-combatants or persons hors de combat are to be treated, to their physical integrity and to their safety*, stem from Article 3(1) common to the four Geneva Conventions and Articles 4, 5, 6, 14 and 18 of Protocol II.<sup>4</sup> Thus, as regards inhumane treatment alone, 23 types of conduct are specifically prohibited, as, for example, murder, torture, collective punishments, taking of hostages, acts of terrorism and threats to commit such acts.

Article 18(2) requires the government in power to accept *international relief operations*, even for the population under opposition control, if that population lacks the supplies essential for its survival and the relief operations are of an exclusively humanitarian and impartial nature and are conducted without any adverse distinction.<sup>5</sup> Article 18(2) of Protocol II is the equivalent of Article 70 of Protocol I, which is applicable to international armed conflicts. In both provisions it will be seen that the State concerned does not have discretionary power to accept or refuse relief operations in favour of a population other than the one it controls, but is under an obligation to accept them when the operations are indispensable and are conducted in such a way as to ensure that they serve exclusively humanitarian purposes.

As in international armed conflicts, *women, children, the elderly and the disabled* are protected by the rules in favour of persons not participating directly in the hostilities. In addition, they may benefit from the provisions relating to the protection of the wounded and sick contained in Article 3(2) common to the Geneva Conventions and Articles 7 to 12

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<sup>4</sup> *Ibid.*, p. 571.

<sup>5</sup> *Ibid.*, p. 573.

of Protocol II. Articles 4(3), 5(2)(a) and 6(4) of Protocol II also reflect the principle of the special protection due to women and children.

## 5. Implementation of international humanitarian law

The suffering experienced by displaced persons must not undermine faith in the rules whose violation has prompted the displacements. Humanitarian law has the strengths and weaknesses of international law, of which it is an integral part. The difficulties that are encountered in implementing it justify an examination of the reasons for which humanitarian law is still inadequately respected and of ways and means of securing more effective application of its rules. *The ICRC therefore believes that efforts should focus on improving respect for international humanitarian law rather than on the establishment of new rules for the specific category — moreover very difficult to define — of displaced persons.* As stated in section 3 above, the needs of displaced persons have to be addressed before, rather than after, their displacement occurs. Such needs have to be tackled as a whole, and not solely in relation to the phenomenon of displaced persons.

States have entrusted the ICRC with the task of ensuring faithful application of international humanitarian law and providing the victims of armed conflicts with protection and assistance (see Article 5(c) and (d) of the Statutes of the International Red Cross and Red Crescent Movement, adopted by International Conferences of the Red Cross and Red Crescent at which the States party to the Geneva Conventions are represented). The terms and conditions under which the ICRC is able to fulfil its various duties differ, however, according to whether the situation is one of international or non-international armed conflict.

In an *international armed conflict*, the ICRC may be appointed as a substitute for the Protecting Power (see Articles 10/10/10/11 of the four Geneva Conventions, respectively, and Article 5 of Additional Protocol I). Whether or not it is appointed as such, the ICRC is entitled in any event to have access to persons protected by the Fourth Geneva Convention, wherever they may be, and to talk to them without witnesses (Article 143 of the Fourth Geneva Convention, which is the equivalent of Article 126 of the Third Geneva Convention, relating to prisoners of war). Finally, the ICRC enjoys a right of initiative which permits it to undertake, with the consent of the authorities concerned, any other activity to protect or assist civilians (Article 10 of the Fourth Geneva Convention).

In *non-international armed conflicts*, the activities undertaken by the ICRC are founded on the right of initiative which it enjoys under Article 3(2) common to the Geneva Conventions. That article allows it to offer its services to the parties to a non-international armed conflict. In practice, it is fortunately very rare for States to reject the ICRC's proposals, with the result that the institution is now active on the scene of virtually all internal hostilities, carrying out the activities entrusted to it by virtue of the Statutes of the International Red Cross and Red Crescent Movement.<sup>6</sup>

The United Nations bodies competent in the human rights area may be led to contribute, in certain contexts, to the implementation of international humanitarian law. It should however be borne in mind that, in armed conflict situations, respect for the rules protecting civilians against the causes or effects of their displacement can ultimately be secured only by permanent close relations with the government in place, regular contacts with all the factions concerned - contacts that in no way entail international recognition of those factions - and practical activities on behalf of the victims of the armed conflict.

*The status of neutral intermediary thus appears indispensable for implementation of the rules protecting civilians against the causes or effects of their displacement in an armed conflict situation.*

In the field, cooperation with the organizations on the spot is very often necessary in order to avoid duplication in relief work. For the same purpose, the ICRC follows with great interest the efforts undertaken under United Nations auspices to improve coordination of the activities of agencies within the United Nations system and of certain non-governmental organizations and, while considering it essential to retain its independence, consults those responsible for such coordination with a view to establishing a concerted approach. *Cooperation and concerted approaches do not, however, imply an overlapping of mandates, and any fragmentation of the legal mechanisms set up to secure respect for international humanitarian law should be avoided, just as much as any fragmentation of the basic rules. It is essential that the ICRC be able to fulfil fully and effectively its role as custodian of the rules designed to limit human suffering in times of armed conflict.*

That being said, the humanitarian agencies can play a part in the implementation of international humanitarian law whenever they bring

<sup>6</sup> *Ibid.*, p. 574.

assistance to victims of armed conflict in accordance with the principles of humanity, impartiality and non-discrimination which, by virtue of the Statutes of the International Red Cross and Red Crescent Movement, the ICRC is duty bound to respect in all circumstances.

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# The contribution of the Emperor Asoka Maurya to the development of the humanitarian ideal in warfare

by the late Professor Emeritus  
Colonel G.I.A.D. Draper, OBE\*

*Gerald Draper (1914-1989) was the foremost specialist in humanitarian law of his generation in the United Kingdom, and was well-respected in the law of war community worldwide. He was a Military Prosecutor in the war crimes trials in Germany after the Second World War, and following his retirement from the Army Legal Staff became a distinguished academic, finishing as Professor of Law at the University of Sussex. Draper was a delegate to many International Conferences of the Red Cross as well as to the Diplomatic Conference which drafted the Additional Protocols of 1977.*

*Professor Colonel Draper had a special interest in the development of the law of war, and in inter-faith dialogue. His interest in Emperor Asoka perhaps reflected his own belief in universal humanitarian principles transcending different traditions. Asoka's specific relevance to contemporary international humanitarian law may be seen in his concern for conquered "border peoples" living under what might now be termed "occupation"; the impartiality of humanitarian provision extending to all peoples, including those of other religions and cultures; and the recog-*

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\* Collated and edited with some revision by Michael A. Meyer, Charles Henn and Hilaire McCoubrey from Professor Draper's notes for a lecture on "The Contribution of the Emperor Asoka Maurya to the Early Development of the Humanitarian Approach to Warfare", which he delivered on 29 November 1982 at Chulalongkorn University in Bangkok, Thailand; and from his notes for a lecture on "The Emperor Asoka Maurya and the Establishment of the Law of Piety", which he delivered on 1 December 1982 at the Siam Society in Bangkok.

*nition of the need for personnel to monitor and supervise the implementation of the publicized norms. Asoka, like Draper, was concerned both with moral values and with the pragmatic exigencies of human life and misfortune.*

*An edited collection of selected works of Gerald Draper on the law of war, entitled **Reflections on Law and Armed Conflict**, is being prepared for publication.*

Michael A. Meyer  
Head of International Law  
British Red Cross

## A. The Maurya Empire: significance

The Maurya Empire forms part of India's past and marks a unique phase in its brilliance and splendour. It lasted for over a century (321-185 BC) and is to be regarded as one of the great civilizations of all time. Apart from its magnificence, and despite the controversy and uncertainty surrounding many of the actions and achievements of its rulers, this empire and, in particular, one of its rulers, are historically significant in their remarkable moral and humanitarian legacy to mankind.

## B. Emergence and establishment

The Maurya Dynasty (321-185 BC) emerged following the withdrawal of Alexander the Great from India in 325 BC, when the dynasty's founder, Emperor Chandragupta, seized the throne of the Nanda Dynasty at Magadha (South Bihar), the leading kingdom of Upper India at the time. After Alexander's withdrawal from India, Chandragupta defeated Alexander's General, Seleucus Nicator, and a vast area of the territory originally conquered by Alexander in India was ceded to Chandragupta by the General in return for five hundred elephants. The cession was followed by the conclusion of a treaty of alliance and friendship, and eventually the General and the Emperor cemented their friendship by intermarriage between their families.

One outcome of this treaty of alliance and friendship was the sending of a Greek ambassador, Megasthenes, by Nicator to Chandragupta's court. During his residence, Megasthenes wrote detailed reports of life at the

court and of the organization of the Maurya Empire. Unfortunately his reports are lost, but fragments of them are repeated in other Greek writings which have survived. Through them, some precious details of the Maurya Dynasty, the Royal Court, the capital city and the remarkable system of government of the empire are known.<sup>1</sup>

Chandragupta reigned for twenty-four years (321-297 BC) before abdicating his throne in favour of his son, Bundusara. His system of government continued under Bundusara, who left no noticeable mark upon the empire. Bundusara was succeeded by his son, Asoka, in 273 BC, although, as was usual, Asoka was not consecrated as Emperor until 265 BC.

The system of government founded by Chandragupta lasted for about ninety years (322-231 BC). It was an absolute monarchy — a case of pure despotism — with the seat of government in Patiliputra (modern Patna), which, according to Megasthenes, was a city of dazzling magnificence. The Maurya Empire was roughly commensurate with that of British India of the early 20th century, but excluding the territory below Madras and excluding what is now Sri Lanka. The standing army was enormous: in Asoka's time, it consisted of 600,000 infantry, 130,000 cavalry, and 9,000 elephants attended by 36,000 men, together with many thousands of chariots and chariooteers, all strictly controlled by six different boards of government. The size of this force must be remembered when considering the scale of the warfare of the day, and the casualties and losses that could result. With an army of this size at his disposal, Asoka's power was absolute.

### C. Emperor Asoka's conquest of the Kalingas and subsequent remorse

With the capability for waging war that he inherited and augmented, Asoka defeated the three Kalinga kingdoms (modern Orissa) in about 256 BC — the sixteenth year of his reign and the eighth after his consecration. Historical evidence — consisting of little other than the surviving thirty-four edicts<sup>2</sup> — does not reveal why he went to war with the

<sup>1</sup> It is known, for example, that Chandragupta relied much upon his trusted adviser, a Brahmin Minister of State — one Chanakya — who had been a perfume seller. The latter rendered the Emperor considerable assistance and skill in devising the Maurya system of government.

<sup>2</sup> These consist of fourteen rock edicts, seven minor rock edicts, two Kalinga edicts, seven pillar edicts and four minor pillar edicts.

Kalingas. However, one of his edicts — the famous Thirteenth Edict or “Rock Edict”, also known as the “Conquest Edict”, of 257 BC —, declared that the victory was overwhelming and losses among the defeated peoples were particularly devastating: his army took 150,000 people captive and slew 100,000, and many times that number died in the conquest.<sup>3</sup>

*“... one hundred and fifty thousand persons were... carried away captive, one hundred thousand were... slain, and many times that number died... [I]f the hundredth part or the thousandth part were now to suffer the same fate, it would be a matter of regret...”.*

From Edict.XIII, circa 257 BC.

Asoka was at pains to declaim in this edict that the casualties, privations and suffering of the defeated Kalingas caused him “profound sorrow” and “regret”, “because”, he said, “the conquest of a country previously unconquered involves the slaughter, death and carrying away captive of the people. That is a matter of profound sorrow and regret to His

Sacred Majesty”.<sup>4</sup> No note of elation can be detected in the edict, and no attempt was made to vindicate his military action or the resulting carnage: the silent moral premise was that all destruction of life, human and animal, and all suffering and privation — no matter how small the scale — are regrettable and to be avoided.<sup>5</sup>

There was, however, another reason for Asoka’s feeling of “still more regret”, he said, “inasmuch as the Brahmins and ascetics, or men of other denominations, or householders who dwell there, and among whom these duties are practised, to wit:— harkening to superiors, harkening to father and mother, harkening to teachers and elders, and proper treatment of (or courtesy to) friends, acquaintances, comrades, relatives, slaves and servants, with steadfastness of devotion — to these befall violence (or injury) or slaughter or separation from their loved ones. Or violence happens to the friends, acquaintances, comrades, and relatives of those who are

<sup>3</sup> See Edict XIII, also known as the “Rock Edict” or the “Conquest Edict”, circa 257 BC.

<sup>4</sup> From Edict XIII, circa 257 BC.

<sup>5</sup> “... One hundred and fifty thousand persons were... carried away captive, one hundred thousand were slain, and many times that number died [in the conquest of the Kalingas] ... So that of all the people that were then slain, done to death ... if the hundredth part or the thousandth part were now to suffer the same fate, it would be a matter of regret to His Sacred Majesty”. — From Edict XIII, circa 257 BC.

themselves well protected, while their affection (for those injured) continues undiminished. Thus for them also that is a mode of violence and the share of this [violence] distributed among all men is a matter of regret to His Sacred Majesty, because it never is the case that faith in some one denomination or another does not exist".<sup>6</sup>

In this edict, Asoka discloses a truly remarkable degree of religious tolerance and of heightened sensitivity to the suffering — even indirect suffering — of all, especially of the righteous, regardless of their religion or denomination.<sup>7</sup> For a mighty Emperor who had only recently won a major victory in war, these are very noble and enlightened sentiments; although, realistically, such sentiments would be of little avail if he did not have absolute power over his peoples.

#### D. Conversion to Buddhism and the inculcation of the Law of Piety

From the time of his victory over the Kalingas in 256 BC, and the consequent remorse, until the end of his reign in 232 BC, Asoka never waged another war. Indeed, in the years following his victory, he spent time piously retracing the steps of the Buddha and raising stupas inscribed with moral injunctions and imperatives at holy places of pilgrimage; and for some two years he became a member of a Buddhist order without relinquishing his role as Emperor.

His conversion to Buddhism, effected with the help of his own teacher, Upragupta, was gradual. Even though he did little to change the system of government he inherited, he introduced a novel and powerful moral idealism — a moral rule or "way of life" in the Buddhist sense as he understood it — which he called the "Law of Piety". This law, though following the tenets of the Buddha, was distinct from them and peculiar to Asoka. It was to become one of the great turning points of the civilization of the East, having profound effects throughout the neighbouring kingdoms, not least in India itself and in Sri Lanka, and reaching China and Greece.

<sup>6</sup> From Edict XIII, circa 257 BC.

<sup>7</sup> This is a combination of two Buddhist ideas: first, it is a greater sin to kill or inflict suffering upon a holy or a good person than it is to kill or inflict suffering upon an evil person; secondly, all religions teach people to be good, so there must be no religious persecution [eds.].

The Law of Piety consisted in moral imperatives requiring that reverence be paid to all to whom it was due, especially to one's superiors, parents, teachers, elders and relations. The imperatives of the Law of Piety required that respect be shown for the sanctity of all animate life, human and animal; they also required humane and just treatment of all, including backward and uncivilized peoples both inside and outside the empire. There were injunctions and prohibitions against vices such as envy, indolence and injustice in relation to and affecting the administration of the empire. In short, the imperatives and prohibitions of the Law of Piety formed a network of righteous relationships between all sentient and animate beings, affecting public, social and familial relationships, and affecting relationships between peoples of different levels of development and between humans and animals. No one was outside its ambit, not even Asoka or the Empress: censors were appointed to ensure that the Law of Piety was observed even in the latter's apartments in the Palace. The Law of Piety was a moral law, an imperial law, a law governing foreign relations and a way of life. At the epicentre of the network was Emperor Asoka himself, who assumed the burden of ensuring the publication and enforcement of this Law.<sup>8</sup>

The Law of Piety disseminated by Asoka throughout his empire and beyond was not a reasoned moral system; it lacked coherence and the intellectual order normally expected of such a system. In this regard, Asoka cannot be compared with the philosophers of classical Greece. No developed dogma or cogent philosophy can be found in his edicts, neither can any theology, except the implicit acceptance of a world other than that of the material, as revealed in the statement, *inter alia*, that he "regards as bearing much fruit only that which concerns the other world";<sup>9</sup> and the implicit acceptance of the Law of Piety as possessing transcendental validity, as revealed in his statement that, after he had annexed the kingdoms of the Kalingas, he began his "zealous protection of the Law of Piety, his love of that Law and his inculcation of that Law".<sup>10</sup>

Asoka drew a comparison between conquest by force of arms and the conquest of the Law of Piety: he called the latter — the conquest of man's heart by the Law of Piety — "the true conquest", quite unlike military

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<sup>8</sup> See, in particular, Edict I, circa 256-255 BC; Edict II, circa 256-255 BC; and Edict XIII, circa 257 BC.

<sup>9</sup> From Edict XIII, circa 257 BC.

<sup>10</sup> *Ibid.*

conquests. "Delight", he said, "is won in the conquest of the Law . . . for this purpose has the scripture of the Law been recorded, in order that my sons and grandsons, who may be, may not think it their duty to make a new conquest. If, perchance, a conquest should please them they should take heed only of patience and gentleness, and regard as a conquest only that which is effected by the Law of Piety. That avails both for this world and the next . . .".<sup>11</sup>

His officials were strongly urged to see that justice was done in the administration of the law, so the humanitarianism of the Law of Piety undoubtedly had a salutary effect on State practices. However, the improvement was relative. The severe criminal law, for example, was not amended, except for the provision that a person condemned to death had three days between sentence and execution for pious meditation and for charitable works

by friends. Torture remained normal practice, though Asoka cautioned that sentences must be passed for just causes only: "[If] it happens that some individual incurs imprisonment or torture and when the result is his imprisonment without due cause, many other people are deeply grieved. In such a case you must desire to do justice . . . For this purpose has the scripture been here inscribed in order that the administrators of the town may strive without ceasing that the restraint or torture of the townsmen may not take place without due cause".<sup>12</sup> Taxation also remained high, at one-quarter of produce and sales.

The dissemination and inculcation of this Law were carried out by edicts, which were inscribed in beautiful Pali calligraphy upon rock surfaces and pillars of polished sandstone. Thirty-four of them have survived. These edicts stood by the great highways of Asoka's empire so

*"Delight is won in the conquest of the Law [of Piety] . . . [F]or this purpose has the scripture of the Law been recorded, in order that my sons and grandsons . . . may not think it their duty to conquer [militarily] . . . If, perchance, a conquest should please them they should take heed only of patience and gentleness, and regard as a conquest only that which is effected by the Law of Piety".*

From Edict XIII, circa 257 BC.

<sup>11</sup> *Ibid.*

<sup>12</sup> From Edict II, "The Provincial's Edict: The Duties of Officials to the Provincials", circa 256-255 BC.

that all who journeyed through his lands could be edified by their message. Their evident repetition was not an oversight, but a reflection of his resolve to inculcate these inflexible principles and to ensure that they were deeply imprinted in the hearts of all who read them.

It is apparent from the texts of the edicts that Asoka was determined to use to the full the resources at his disposal and the powers of an absolute monarch and despot to proclaim and enforce the Law of Piety. The very despotism that enabled him to lead his army to victory also enabled him to establish a new moral order in his empire and to see to its observance. There is no reasoning, no premise, no invocation of any gods in the edicts: it was sufficient that the calamity suffered by the defeated Kalingas inspired "profound sorrow and regret" in Asoka and led him to introduce a new moral order — one that he had no need of explaining or defending to the reader of the edicts. While he indubitably thought on a universal scale and propounded moral values of great nobility, the system rested upon pure despotism: his imperatives and injunctions were both the law and the complete way of life for his people and the special charge of his officials, on whom there were tremendous despotic pressures to pursue the course he prescribed.

Public officials administering the towns were exhorted by Asoka to carry out his principles assiduously on pain of incurring his displeasure. He pointed out the nexus between bad government and officials who fell short in their observation of the Law of Piety; and he made it clear that he would brook no idleness or injustice, let alone any obstruction of his endeavours. The tenor of the edicts indicates that there were some officials who did not fully heed his moral instructions, and that there were others who defaulted owing to "certain natural dispositions [which] make success . . . impossible, to wit, envy, lack of perseverance, laziness, indolence". There is evidence, too, that the moral principles expressed in Asoka's Law of Piety met with some opposition in his empire.<sup>13</sup> Evidently

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<sup>13</sup> "Whatsoever my views are I desire them to be acted on in practice and carried into effect by certain means. And in my opinion the chief means for this purpose are my instructions to you, because you have been set over many thousands of living beings that you may gain the affection of good men . . . You, however, do not grasp this truth to its full extent. Some individual, perchance, pays heed, but to a part only, not the whole. See then to this, for the principle of government is well established . . . it happens that some individual incurs imprisonment or torture and when the result is his imprisonment without due cause, many other people are deeply grieved. In such a case you must desire to do justice. However, with certain natural dispositions success is impossible, to wit, envy, lack of perseverance, laziness, indolence. You [the officials] must desire that such dispositions be not yours. The root of the whole matter lies in perseverance and patience in applying

the aspirations were too high and the manifold changes expected of human conduct were too abrupt.

Asoka also exhorted his officials with promises of reward and threats of sanctions, both in this world and in the next, to administer with justice and patience those beyond the pale — those recently brought under his rule by the annexation of the three Kalinga kingdoms and the “unsubdued border-dwellers”. Such officials, he said, “are in a position to make these people trust [him] and to ensure their prosperity both in this world and in the next . . .”. The aim was compassionate administration and to have them, too, observe the Law of Piety:

“‘All men are my children’; and, just as I desire for my children that they may enjoy every kind of prosperity and happiness both in this world and in the next, so also I desire the same for all men.

“In regard to the unsubdued borderers . . . the King desires that they . . . should not be afraid of [him], that they should trust [him] . . . the King will bear patiently with [them] and that for [the King’s] sake they should follow the Law of Piety and so gain both this world and the next.

“By instructing and intimating my will, my inflexible resolve and promise, I [the King] shall be provided with (trained) local officials for this business, because you are in a position to make these people trust me and to ensure their prosperity both in this world and in the next, and by so doing, you may win heaven and also effect my release from debt.

“And for this purpose has this scripture of the Law of Piety been written here, in order that the High Officers may strive without ceasing, both to ensure the confidence of these borderers and to set them moving on the path of piety . . . ”.<sup>14</sup>

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this principle of government. The indolent man cannot rouse himself to move, yet one must needs move . . . In the same way you must see to your duty, and be told to remember: — ‘See to my commands; such and such are the instructions of His Sacred Majesty.’ Fulfilment of these bears great fruit, non-fulfilment brings great calamity. By those who fail neither heaven nor the Royal Favour can be won. Ill performance of this duty can never gain my regard, whereas in fulfilling my instructions you will gain heaven and also pay your debt to me . . . For this purpose has the scripture been here inscribed in order that the administrators of the town may strive without ceasing that the restraint or torture of the townsmen may not take place without due cause. And for this purpose . . . I shall send forth in rotation every five years such persons as are of mild and temperate disposition, and regardful of the sanctity of life, who knowing that this is my purpose will comply with my instructions . . .” From Edict II, “The Provincial’s Edict: The Duties of Officials to the Provincials”, circa 256-255 BC.

<sup>14</sup> From Edict I, “The Borderers’ Edict: The Duties of Officials to the Border Tribes”, circa 256-255 BC.

Even those well and truly beyond the pale — the “forest folk” — were not excluded from just and humane treatment and the benefits of the Law of Piety. Upon “the forest folk in his dominions”, Asoka said, he “looks kindly, and he seeks to make them think (aright) for (otherwise) repentance would come upon His Sacred Majesty. They are bidden to turn from their (evil) ways that they be not chastised. Because His Sacred Majesty desires for all animate beings security, control, peace of mind and joyousness”.<sup>15</sup>

In these edicts, relating to the duties of officials in regard to the border tribes and forest folk, Asoka can be seen as, at once, a despot, a moral reformer, a missionary and a teacher of a way of life; the edicts reveal a sense of universality of affection for all people — an early form of humanitarianism which is not limited to war.

It is also clear from the edicts that he sent large numbers of missionaries to places as far afield as Greece and China, “among all his neighbours as far as six hundred leagues, where the king of the Greeks named Antiochos dwells, and to the north of that Antiochos (where dwell) the four kings named severally Ptolemy, Antigonos, Megas, and Alexander (likewise) in the south, the Cholos and Pandys as far as the Tamraparni river — and here, too, in the King’s dominions — among the Greeks, Kambojas, the Nabhapantis of Nabhaka; among the Bojas, Pitinikas; Andhras and Pulindas — everywhere they follow the instruction of His Sacred Majesty in the Law of Piety. Even where the envoys of His Sacred Majesty do not penetrate, these people, too, hearing His Sacred Majesty’s ordinance based upon the Law of Piety and his instruction in that Law, practise, and will practise the Law”.<sup>16</sup> As well as all the neighbouring States and the remainder of India not governed by him, Asoka’s missionaries brought Sri Lanka into the Buddhist fold.

One of the most radical of Asoka’s reforms was the almost total prohibition on hunting and slaying of animals for food. He abolished the tradition in the royal kitchen of slaughtering one peacock each day. Even the famous Royal hunting parties, during which the complete Royal Court, the harem, the officials and servants went to hunt for several weeks, were curbed. For these hunts, large areas of the forest were marked off with coloured ribbons for the royal progress; all strangers found within the limits of the royal route were liable to the death penalty, probably, as was

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<sup>15</sup> From Edict XIII, circa 257 BC.

<sup>16</sup> *Ibid.*

ordinary criminal practice, preceded by mutilation. Asoka stopped these and all other hunting expeditions because animal life, like human life, was sacred. He went so far as to provide for the establishment of hospitals on the highways of his empire for the care of sick and injured people *and of their beasts of burden*. In typical Asoka fashion, edictal orders were issued for his officials to enforce the hunting prohibitions at the same time as they were instructed to observe, and to monitor the observance of, other aspects of his Law of Piety. This prohibition of animal slaughter corresponded to Asoka's moral revulsion for human slaughter in warfare and his subsequent abhorrence of any killing and suffering.

The intensity of Asoka's moral fervour in these edicts is as evident as his officials' failure in implementing them. Such lofty moral instructions could not have been easily carried out. Asoka continued to uphold and ensure the implementation of his Law of Piety until the end of his reign; his undistinguished descendants, however, were unable to sustain his moral mission and the Law of Piety lost its vigour. After his death in 231 BC the empire was divided, its power declined and the Law of Piety passed into history.

The Maurya Dynasty under Emperor Asoka's idealism underwent a profound moral transformation at court, in official life, and in the basis of all relationships throughout his extensive dominions and beyond. It witnessed the elevation of Buddhism from a sect in India to one of the great religions of the world, affecting and becoming part of the course of history of Sri Lanka, Burma, Thailand, Japan, Tibet and, to a lesser extent, China. In unfolding humanitarian principles Emperor Asoka's pioneering and precocious ideals and his lofty moral legacy, transcending place and time, rank him among the foremost moral teachers and among the greatest civilizing influences in human history.

## E. Emperor Asoka: fact and legend

Historical evidence relating to Emperor Asoka's life and words consists of legends and the texts of the thirty-four edicts, inscribed on rock surfaces, which have survived. There is little else.

Of Asoka's early career it is known, for example, that before he became Emperor, during the lifetime of his father, Bindusara, he held the important office of Viceroy of Vyjirin, the main provincial capital. This was the normal practice of the Maurya Dynasty — one to be expected

in an absolute and despotic monarchy — whereby the prince was groomed and given an apprenticeship by his father.

Knowledge of Asoka's later career is derived principally from the thirty-four edicts. While they do not disclose the reason for war with the Kalingas, the "Conquest Edict" does announce his victory over them and his subsequent remorse and "protection" of the Law of Piety. Other edicts issue instructions for implementation and enforcement of this Law and record his dispatch of missionaries and his pious retracing of the footsteps of the Buddha. Beyond this, there is little historical information.

Not enough evidence has survived to allow the development of the Law of Piety and its contents to be traced. It is clear that Buddhist ideas must have played a major part in the moral order which Asoka chose to govern his way of life and that of his empire, but as the Law of Piety is obviously not a crib from Buddhism, the question — the unanswerable question — arises regarding the extent to which his experience of the conquest of the Kalingas determined the nature and content of his moral ideas, as contradistinguished from the main canon of Buddhism.

Some legends surrounding Asoka's life and works are inconsistent with other historical evidence. In Sri Lanka, for example, unsubstantiated legends depict him as an evil man who secured the death of his brothers. While fables of an evil early life could be true, as they would not be inconsistent with his gradual and undramatic adoption of Buddhism and the slow movement towards the Law of Piety which is seen in his edicts, doubts remain about the verity of these legends owing to the lack of corroborating historical evidence. However, it is also thought that stories of fratricide and other legends were fabricated to impress upon his subjects the power he held over them as a despot, as well as to impress upon them the innate goodness which made him susceptible to feelings of horror, followed by remorse and regret, when he witnessed the bloodshed of war, rather than feeling joyful at the victory of his army. His moral stature was elevated by his evident transcendence of evil and his transformation into an Emperor of lofty principles after the defeat of the Kalingas. In themselves, these legends probably grew out of the desire to enhance and exaggerate which was common to the legend-history of the era.

## F. Conclusion

Emperor Asoka was one of the great moral reformers in the history of civilization and a precocious pioneer of humanitarian values. The

impetus for his humanitarian work was derived from his gradual conversion to Buddhism following his witnessing of the carnage and suffering in a war in which his army was victorious. A bold and original reformer who thought on a universal scale and propounded moral values of great nobility, he never claimed to be the inventor of those moral principles; indeed, he took them to be self-evident truths of transcendental validity that stood without need of religious or metaphysical support. They were derived from Buddhism but were distinct from it, and unique to him. The Law of Piety prescribed essentially but not exclusively reverence for superiors; compassion for the ignorant, the suffering, the backward and all living creatures; and acceptance of the goodness of those belonging to other faiths and religions. In short, the Law prescribes righteous relationships between all, including a righteous relationship between the Emperor himself (and his Empress) and others.

Asoka was primarily concerned with the pragmatic and daily affairs of mankind, holding that those same principles that guide righteous conduct in the affairs of this world will bring forth benefit in the next. His edicts made no reference to "nirvana" or "karma", yet it is clear that the other world was as important as, if not more important than, this one.

Defects in his moral ardour are apparent: the Law of Piety was both the morality and the law — the complete way of life — for all, and was enforced using all the despotic means at Asoka's disposal throughout his empire. He brooked no resistance; and any lack of enthusiasm in observing the Law incurred his displeasure. Humanity in the administration of the criminal law was not apparent, although in relation to previous regimes there was less brutality.

Comparison with other notable converts reveals Asoka's true stature. Unlike Pharaoh Akhenaton of the 18th Dynasty (14th century BC), Asoka was not a mere believer: he was active and relentlessly pursued the effective dissemination and observance of his Law of Piety. Some writers have compared Asoka with Constantine the Great and with St. Paul in that he was a combination of an Emperor convert and the foremost missionary of his special form of Buddhism. However, Asoka never underwent a dramatic, traumatic experience or conversion such as that of St. Paul on the road to Damascus. The analogy with Constantine the Great is false. Constantine did not cease to wage wars after the Edict of Milan of 313 AD, nor was he the author of Christianity; in fact he was a late and hesitant convert to Christianity. There were already many Christians in the Roman Empire before Constantine promulgated the Edict. Constantine, in a word, came late and slowly to the Christian faith. By

contrast, Asoka boldly established his own Law of Piety, and used his position as an absolute monarch to impose it upon his subjects. A similarity exists between the two Emperors in that both of them made their religious and moral beliefs the official religion and morality of their respective empires. There was nothing of the missionary or pioneering moral teacher in Constantine, but such were the attributes for which Asoka will be remembered. The comparison of Asoka with Constantine the Great is by way of contrast: Asoka stands out in history as a mighty missionary Emperor and a moral teacher of a stature greater than was ever achieved by Constantine the Great.

More significant, in the present context, than his legacy of a just and more humane administration of a very large empire, his assiduous dissemination of lofty moral values and Buddhism, and his vigorous cultivation of heightened moral sensitivity among his subjects and officials, is his legacy to the humanitarian ideal in warfare; for the ultimate humanitarian ideal in warfare is that it should not happen. After witnessing the sufferings of the defeated Kalingas, Asoka found he could not reconcile the Buddhist tenet of the sanctity of all animate life with recourse to war, so much so that he even terminated the tradition of the Royal Hunt and, indeed, banned the killing of animals. He never again engaged in a military campaign and he sought, through edicts permanently inscribed on rock surfaces, to deter his sons and grandsons from so doing and urged them to "take heed only of patience and gentleness, and regard as a conquest only that which is effected by the Law of Piety".<sup>17</sup> Respect for all living creatures was not peculiar to Asoka, but its nexus with warfare was a novel moral teaching. Conquest in war was replaced by the conquest effected by the Law of Piety; and the ultimate good towards which all must strive was decreed to be the conquest of this Law. This startling thought, transcending time and place, was nothing less than a precocious realization of humanitarian values in the Indian sub-continent in the middle of the third century before Christ. The distinguishing features of the Law of Piety — that war should be abhorred; that heightened sensitivity to the suffering of others, including animals, should be cultivated; that lofty and religiously neutral but universal moral values which transcend different religions should be diligently pursued and realized — give Asoka a valid claim to being a precocious, pioneering and dedicated advocate of the

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<sup>17</sup> *Ibid.*

humanitarian principles which today characterize the regimes of human rights and the humanitarian law of war.

*"... [I]n as much as ... men of other denominations, or householders who dwell there, ... among whom these duties are practised, to wit, harkening to superiors, harkening to father and mother, harkening to teachers and elders, and proper treatment of friends, acquaintances, comrades ... servants, with steadfast devotion — to these befall violence or slaughter or separation from their loved ones. Or violence happens to the friends, acquaintances, comrades and relatives of those who are themselves well protected, while their affection for those injured continues undiminished. Thus for them also that is a mode of violence; and the share of this [violence] distributed among all men is a matter of regret to His Sacred Majesty, because it never is the case that faith in some one denomination or another does not exist". — From Edict XIII, circa 257 BC.*

## From the end of the Second World War to the dawn of the third millennium

### The activities of the International Committee of the Red Cross during the Cold War and its aftermath: 1945-1995

by François Bugnion

#### A field of ruins

8 May 1945: *Victory Day!* An exhausted Europe emerged with relief from six years of oppression and carnage.

And yet there was no sign of the profound, immediate and spontaneous joy which had followed that earlier victory on 11 November 1918. The continuing war in Asia, combined with the deep rifts left behind by collaboration, the discovery of mass graves and the horror of the concentration camps, the immensity of the mourning and the destruction, and widespread concern for the future all held the people back from yielding freely to the headiness of restored peace.

Moreover, illusions had been lost: the armistice signed at Rethondes had been hailed as the victory of right over force, of the will to peace over the violence of war. The new system of international relations within the framework of the future League of Nations was to exclude forever any return to the endless slaughter from which the world had just emerged.

But there was none of that in May 1945: everyone understood the fragility of the Grand Alliance which had vanquished the Nazi hydra. As soon as Hitler was dead, the variances between the victors reappeared.

The Red Cross was less able than any other institution to succumb to euphoria. It had been in contact with too much suffering not to rejoice

at the return of peace. But even though the Red Cross had managed to build up its activities to a spectacular extent throughout the six years of war, and despite its undoubted successes, it had come too close to the victims not to be aware of its own setbacks.

Everywhere in the world, the National Red Cross and Red Crescent Societies had been at the forefront of the struggle against suffering: they effectively supported the armed forces' health services; they organized health care behind the lines; they assisted convalescents and helped the families of soldiers killed in action; in many countries, they supported, and sometimes even replaced as best they could social services disrupted by war. Even in occupied Europe, the National Societies had managed to continue their relief work within the narrow limits imposed on their activities by the occupation authorities.

Throughout the conflict, the International Committee of the Red Cross was the linchpin of relief action for prisoners of war. The Central Agency for Prisoners of War, with the help of the services of over 3,000 volunteers, was able to restore a vital link between prisoners and their families; ICRC delegates travelled the world over to assist prisoners and to monitor the conditions in which they were held captive; from its headquarters in Geneva, the ICRC set up such a vast relief operation that it became the largest civil transport undertaking during that period. Its relief work in Greece with the support of the Swedish government was decisive in helping to save the country's population from starvation. And yet, despite these unprecedented achievements, despite the Nobel Peace Prize awarded to it for the second time in December 1944, the ICRC came under attack as soon as the fighting ceased. It was held responsible for the tragic fate of the Soviet prisoners of war, over half of whom died in captivity; it was also blamed for not denouncing racial persecutions and the hell of the concentration camps, the full horror of which the world discovered after the collapse of Nazi Germany.<sup>1</sup>

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<sup>1</sup> On the ICRC's work in the Second World War, see: *Report of the International Committee of the Red Cross on its Activities during the Second World War*, 1 September 1939 - 30 June 1947, Geneva, ICRC, 1948, 3 volumes + annexes.

On the ICRC's activity on behalf of the victims of Nazi persecutions, see: *The work of the ICRC for Civilian Detainees in German Concentration Camps from 1939-1945*, ICRC, Geneva, 1975; Jean-Claude Favez, *Une mission impossible? Le CICR, les déportations et les camps de concentration nazis*, Editions Payot, Lausanne, 1988; Arieh Ben Tov, *Facing the Holocaust in Budapest, The International Committee of the Red Cross and the Jews in Hungary, 1943-1945*, Henry Dunant Institute, Geneva, 1988; Jaeques Meurant, "The International Committee of the Red Cross: Nazi persecutions and the concentration camps", *International Review of the Red Cross*, No. 271, July-August 1989, pp. 375-393.

## Reconstruction

From the Atlantic to the Volga, Europe was laid waste by the movements of armed forces, by the bombing and by the destruction. Massacres were innumerable; crops and food stocks were destroyed, so hunger was rife everywhere, but especially in Germany, in Eastern Europe and in the Balkans.

Nevertheless, the victors did not wait until the end of the war to prepare for the post-war period and to plan reconstruction. In 1943, the Allies set up an ad hoc body, UNRRA, for the purpose of organizing and coordinating huge relief programmes for the stricken populations. From 1947 on, the Marshall Plan gave a fresh impetus to reconstruction work, enabling Europe — or at least Western Europe — to emerge from depression much more quickly than had been expected.

The National Societies played an active part in this vast relief and reconstruction operation. They looked after returning former prisoners of war, deportees and refugees, and helped with the resettlement of war disabled. Several of them, and especially the American Red Cross, undertook magnificent relief programmes for populations which had suffered most from war and occupation, notably in France, Belgium, the Netherlands, Poland, Yugoslavia and Greece.

The International Committee, in accordance with its mandate, did its best to help the victims of the aftermath of war, giving priority to those who could expect little help from the relief organizations set up by the Allies, because they were on the side of the defeated: German prisoners of war, whose ranks were dramatically swollen as a result of the unconditional surrender, people of German origin uprooted in large numbers from countries of Central and Eastern Europe, and the German population which had come in its turn to taste the bitterness of defeat and the rigours of occupation.

Although the ICRC's efforts to help the defeated were undoubtedly in keeping with the Fundamental Principles of the Red Cross, which require it to provide assistance impartially and to give priority to the most urgent cases of distress, it was not understood. At a time when the world was realizing the sheer monstrosity of the persecutions which had been perpetrated under the Hitler regime and at a time when the populations of other countries were finally emerging from the nightmare of occupation, how could the ICRC's desire to bring assistance to German prisoners of war, who were held collectively responsible for the crimes committed by Nazi Germany and the most blameworthy of whom were about to be

prosecuted as war criminals, be considered admissible? Accusations swiftly followed and some, like the Soviet government, went as far as demanding the outright abolition of the ICRC.

But not only governments were pointing an accusing finger: within the Movement itself the Alliance of Red Cross and Red Crescent Societies of the USSR, backed by the Yugoslav Red Cross, advocated doing away with the International Committee and transferring its functions to the League of Red Cross Societies. Count Bernadotte, Chairman of the Swedish Red Cross, proposed modifying the composition of the ICRC to bring in representatives of all the National Societies. Others suggested attributing executive tasks to the Standing Commission elected by the International Conference of the Red Cross, which would then be placed above both the ICRC and the League.

Faced with these accusations, the International Committee tried to regain its position in three ways.

In the operational field first of all, the ICRC not only continued to provide assistance to the victims of the Second World War, but it also came to the help of the victims of the new conflicts breaking out around the world, such as the civil war in Greece, the Indonesian conflict, the Indochina war, the first conflict between India and Pakistan, or the first between Israel and the Arabs. Whereas the ICRC was able only to conduct very limited activities in Greece, Indonesia, Indochina and Kashmir, its work in Palestine developed considerably, enabling it to fulfil its traditional role as a neutral intermediary between belligerents. The ICRC made sure to give as much publicity as possible to the activities of its delegates and the results obtained, especially for the protection of hospitals, the creation of security zones, the exchange of family news, the protection of prisoners and assistance to refugees. In this way, the ICRC wanted to highlight the type of services it could render in its capacity as a neutral intermediary, thereby pointing out the consequences which would be bound to follow for war victims if it ceased to exist.<sup>2</sup>

At the same time, the ICRC was working on the revision of the Geneva Conventions of 27 July 1929, the shortcomings of which had been all too clearly shown up by the war. In fact, it did not wait for the end of hostilities to make known its intention of embarking on this task; in a memorandum

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<sup>2</sup> Dominique-D. Junod, *The Imperiled Red Cross and the Palestine-Eretz Yisrael Conflict, 1945-1952, The Influence of Institutional Concerns on a Humanitarian Operation*, Kegan Paul International, London (to be published shortly).

dated 15 February 1945, it had announced that it was starting consultations to that effect.

In undertaking this revision, the ICRC had three main objectives:

- to extend the protection of the Geneva Conventions to civilians who fall in the power of the enemy;
- to protect the victims of civil wars;
- to add to the new Conventions a monitoring mechanism in which it would itself take part.

The ICRC convened the National Red Cross Societies in 1946, and then a meeting of government experts in 1947. On the basis of those discussions, it prepared four draft conventions, which were approved by the Seventeenth International Conference of the Red Cross, meeting in Stockholm in August 1948, then by a Diplomatic Conference, which met in Geneva at the invitation of the Swiss government from April to August 1949.

On 12 August 1949, the Diplomatic Conference adopted four Geneva Conventions for the protection of:

- the wounded and sick in armed forces in the field;
- the wounded, sick and shipwrecked members of armed forces at sea;
- prisoners of war;
- civilian persons.

These four Conventions contained a common article concerning the protection of victims of armed conflicts not of an international character and instituted supervisory mechanisms by specifying the role of Protecting Powers responsible for safeguarding the interests of the Parties to the conflict. In addition, special provisions recognized the role of the ICRC and confirmed its right of initiative.

For the ICRC, this was a considerable success in that, at a time when the world was deeply divided by the Cold War and the Berlin blockade brought the USSR and the West into open confrontation, the international community had consented to come together to adopt a new humanitarian order.

There remained the problem of re-establishing the unity of the International Red Cross and Red Crescent Movement, which had been strongly affected by the divisions of the Cold War, and to restore the ICRC's position within the Movement which it had founded.

As mentioned above, despite the very great services it had rendered throughout the war, the International Committee became the target of accusations as soon as the fighting abated. Its first concern was therefore to postpone any decision on its composition and its future until the new Geneva Conventions had been adopted. By confirming the mandate entrusted to it by the international community, the Conventions in fact also strengthened its position within the Movement, as the National Societies and the League quickly realized that they could not, without discrediting themselves, oppose the existence and the independence of the ICRC, which had just been endorsed by the new Geneva Conventions as an impartial humanitarian organization. Attacking the ICRC's position was tantamount to casting doubts on the Red Cross and Red Crescent Movement's role in the implementation of humanitarian law, which would have been suicidal.

As for the plans for changing the composition of the ICRC to bring in representatives of the National Societies, it was soon so obvious that a multinational ICRC would inevitably reflect the fault lines of the Cold War and would be paralyzed by divisions within itself that they came to be opposed by the very people who had proposed them in the first place.<sup>3</sup>

Moreover, the ICRC and the League shared a same desire to avoid being placed under the authority of the Standing Commission of the International Red Cross.

They therefore started the task of revising the Statutes of the International Red Cross, which had been adopted by the Thirteenth International Conference of the Red Cross, meeting in The Hague in 1928.

A joint commission of the ICRC and the League prepared a new draft, which essentially preserved the basic structure of the 1928 Statutes and the division of tasks between the two institutions: the League, as the federation of National Societies, kept the main responsibility for the development of member Societies and for coordinating their relief work in peacetime; the ICRC on the other hand remained the guardian of the Movement's Fundamental Principles; it retained responsibility for bringing protection and assistance to the victims of war, civil wars and internal

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<sup>3</sup> "My proposal resulted in lengthy and lively discussions. A special committee was formed which met frequently. In the course of these meetings I greatly revised my original attitude towards the problem [...]. In short, I have become convinced that the International Committee ought to continue in its present form and retain its present composition...". Folke Bernadotte, *Instead of Arms*, Hodder and Stoughton, London, 1949, pp. 129-131 and 163-166, ad p. 130.

disturbances and was confirmed in its role as a neutral intermediary; it remained in charge of coordinating the international activities of National Societies in times of conflict. In order to carry out these tasks, the ICRC's composition and mode of recruitment by cooption from among Swiss citizens were also confirmed.

Thanks to the new draft Statutes, a split in the Movement was avoided, while the ICRC itself, which was responsible for coordinating Red Cross relief work in the event of armed conflict, maintained a mode of recruitment which ensured that the divisions of the Cold War were not reflected in its composition.

There still remained the hurdle of having these draft Statutes approved by the Eighteenth International Conference of the Red Cross, meeting in Toronto in 1952. On that occasion, however, the ICRC came under strong attack by the governments and National Societies of the Communist countries, which reproached it both for the part it had played during the Second World War and for its activities in Korea, which had been restricted to areas controlled by the United Nations forces as the government of the People's Democratic Republic of Korea had rejected its offers of services.

Finally, the revised Statutes were adopted by 70 votes to 17. The unity of the Movement was preserved, although to a large extent the cracks had only been papered over, as subsequent events were to confirm.

## From the Korean war to the fall of the Berlin wall

The Grand Alliance, which was to crush Nazism, was the product of Hitler just as much as that of the Allies themselves. The deep divisions between the USSR and its Anglo-Saxon allies were fully revealed at the Potsdam Conference, which was held amid the smoking ruins of the Third Reich's former capital.

In his famous Fulton speech on 5 March 1946, Winston Churchill noted that "*from Stettin on the Baltic to Trieste on the Adriatic an iron curtain has descended across the Continent*".<sup>4</sup> This was to stay in place until the fall of the Berlin wall in November 1989.

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<sup>4</sup> Keesing's Contemporary Archives, 1946, p. 7771.

In a world which was deeply split into two opposing blocs, what courses of action were open to the ICRC?

These varied considerably from one conflict to another. While all the conflicts in this period bore some marks of the Cold War, they were not all affected to the same extent. Some conflicts were a direct consequence of the Cold War, such as the Korean war, which resulted from the division of the peninsula into two occupation zones after Japan's defeat, and to a large extent the wars of Indochina and Viet Nam. Other conflicts were mainly triggered by other endogenous causes, but still reflected Cold War alignments, with one camp looking for support from the West and the other from the USSR and its allies, as in the case of the Arab-Israeli conflicts of 1956, 1967 and 1973. In fact, most of the conflicts of that period reflected such alignments in varying degrees. In a few cases, the belligerents managed to keep clear of the Cold War, as in the conflicts of 1965 and 1971 between India and Pakistan, or the Falkland-Malvinas Islands war in 1982.

The possibilities open to the International Committee largely depended on these different situations. Although they were party to the 1949 Geneva Conventions, the Soviet Union and its allies never really accepted the ICRC's mandate, and even less the fundamental principles of humanity, neutrality and impartiality which it upheld. In the essentially Manichean philosophy of Marxism-Leninism, there is no room for neutrality or impartiality, and there is no question of placing the victims on an equal footing. Between Communism and Capitalism, between "progressive forces" and "reactionaries", the relationship can only be one of opposition, leaving no room for any neutral intermediary.

Regardless of the International Committee's efforts to dissociate itself from the Atlantic bloc — especially on the basic question of banning nuclear weapons — the USSR and its allies always looked upon it as belonging to the bourgeois, capitalistic bloc, in other words, to the enemy.

In those circumstances it was hardly surprising that the ICRC was unable to act as a neutral intermediary either in the Indochina war, or in the Korean war, or in the Viet Nam war, as its offers of services were rejected both by Hanoi and by Pyongyang.

Paradoxically, it was at the time of the Sino-Vietnamese conflict of February 1979 — between two Communist States — that the ICRC's role as a neutral intermediary was again recognized. The ICRC was given access both to Vietnamese prisoners detained by China and to Chinese

prisoners captured by Vietnamese forces, and it helped with their repatriation from both sides.

But it was mainly the relief work in Cambodia which helped to restore the ICRC's image of impartiality within the Communist world.

It may be remembered that the Vietnamese intervention in January 1979 led to the overthrow of the Khmer Rouge regime and to the establishment in Phnom Penh of a pro-Vietnamese government, which was recognized only by the USSR and its allies. Cambodia was in fact in such a devastated condition that the government of Hanoi soon realized that it would be unable to ensure its protégé's recovery. With a great deal of reluctance, Hanoi and Phnom Penh accepted the ICRC's and UNICEF's offers of services. The two institutions set up one of the most extensive relief operations ever carried out, thus decisively contributing to the country's revival. There is no doubt that the ICRC on that occasion managed to overcome the divisions of the Cold War and to fulfil its role as a neutral intermediary between the West - which supplied 99% of the resources needed for the relief work - and the Marxist regime in Phnom Penh.<sup>5</sup>

Nevertheless, the Cold War gave rise for the ICRC to a series of setbacks: it was unable to bring assistance either to French prisoners captured during the Indochina war, or to prisoners of the United Nations forces captured in Korea, or to American prisoners held by the Vietnamese forces. It was not able either to help the civilian populations cruelly affected by war and bombings. For over thirty years, its role as a neutral intermediary and the principles underlying its work were rejected by all the countries of the Communist bloc. Moreover, the ICRC itself never managed to dissociate itself clearly enough from the West on some highly critical issues, such as American bombing in Viet Nam, Laos and Cambodia.

More generally speaking, it has to be admitted that humanitarian law was not much respected during those conflicts, as each of the parties maintained it was waging a just war which relieved it of the need to observe humanitarian rules in dealing with its enemies.

In the same period, other conflicts were not affected by the Cold War to the same degree. That was particularly the case of the various Arab-Israeli conflicts (1948-49, 1956, 1967 and 1973) or the conflicts

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<sup>5</sup> William Shawcross, *The Quality of Mercy. Cambodia, Holocaust and Modern Conscience*, Simon and Schuster, New York, 1984.

between India and Pakistan (1947, 1965 and 1971). During these conflicts, the ICRC's position and its role as a neutral intermediary were generally recognized. It was able to transmit the lists of prisoners captured on both sides or to register them itself; its delegates were able to meet prisoners of war and civilian detainees at their places of detention and to talk in private with prisoners of their choosing; they were asked to assist with the repatriation of war-wounded during the hostilities, and with the general repatriation of prisoners at the end of active hostilities. The Central Tracing Agency set up family message services for relatives separated by war and organized countless family reunifications. Lastly, the ICRC set up extensive operations to provide food and medical care for war casualties, prisoners and civilian populations, while coordinating the National Red Cross and Red Crescent Societies' international relief activities for war victims.

It did so in particular during the Hungarian uprising (1956) and the Suez conflict (1956-57), the civil war in the former Belgian Congo (now Zaire) after its accession to independence (1960), the civil war in Yemen (1962-1970), the civil war in Nigeria (1967-1970), the Six-Day War (1967), the civil war in Jordan (September 1970), the third India-Pakistan conflict (December 1971), the Arab-Israel conflict of October 1973, the civil war in Lebanon (1975-1990), the conflicts in Nicaragua (1978-1989) and El Salvador (1979-1990) and many others.

In all these conflicts, the International Committee received the backing of the National Red Cross and Red Crescent Societies. Over and above its specific tasks arising from its role as a neutral intermediary, the ICRC coordinated the relief work of the National Societies. The League took an active part in a number of those operations, while letting the ICRC assume the general direction of international Red Cross and Red Crescent action, in accordance with existing rules.

But new forms of conflict had already appeared, seeking to hasten the demise of the colonial empires. In most cases, the national liberation movements fighting to regain the independence of colonial peoples were not strong enough to oppose the armed forces of the metropolis openly and had to merge with the civilian population to use guerrilla methods.

These new forms of conflict threatened to undermine the very foundations of humanitarian law — and first of all the principle that a distinction must be drawn between combatants and the civilian population — while rendering the ICRC's role as a neutral intermediary problematic since the adversaries employed completely different methods of fighting. Furthermore, the colonial powers long considered the conflicts occurring

in one or other of their colonial territories as purely internal affairs exclusively within their own national jurisdiction.

On the basis of Article 3 common to the four 1949 Geneva Conventions, the ICRC nevertheless offered its services to the parties in conflict. In many cases, for instance during the Algerian war (1954-1962), the war of independence in Kenya (1956) and in the struggles afflicting the Portuguese colonies of Angola and Mozambique, as well as in Rhodesia/Zimbabwe, Namibia and South Africa, it was able to initiate some major operations, particularly in favour of members of liberation movements captured by the armed forces of the colonial powers.

Beyond the conduct of the ICRC's operational activities, however, these conflicts raised the question of the extent to which international humanitarian law was duly adapted to wars of national liberation and guerrilla warfare. This led to a further revision of humanitarian law.

## From the 1949 Conventions to the Additional Protocols

From the time that the new Geneva Conventions were adopted, the ICRC was fully aware of the gap between the "law of Geneva", which had been completely redrafted in 1949, and the rules governing the conduct of hostilities, or "law of The Hague", which had remained unchanged since the Second International Peace Conference in The Hague in 1907.

The question of the protection of civilian populations against the effects of hostilities, for instance, was a particularly burning issue; most of the major cities of Europe and Asia still bore the scars of the bombs dropped throughout the Second World War, and the destruction of Hiroshima and Nagasaki was an ominous indication of what might lie ahead.

The ICRC therefore decided to hold new consultations with experts, after which it drew up a set of Draft Rules designed to limit the dangers incurred by the civilian population in wartime.

The draft was particularly ambitious and is probably one of the most detailed texts ever proposed for the protection of civilian populations. Article 14 of the draft prohibited any use whatsoever of weapons "*whose harmful effects — resulting in particular from the dissemination of incendiary, chemical, bacteriological, radioactive or other agents — could spread to an unforeseen degree or escape, either in space or in time, from the control of those who employ them, thus endangering the civilian population*".<sup>6</sup>

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<sup>6</sup> *Draft Rules for the Limitation of the Dangers incurred by the Civilian Population in Time of War*, ICRC, Geneva, September 1956, p. 12.

That amounted to a total ban on the use of atomic weapons. It also led to the failure of the draft rules, for when the draft was submitted to the Nineteenth International Conference of the Red Cross, which met in New Delhi in November 1957, Article 14 was attacked from all sides. The Soviet Union and its allies considered that the ICRC's draft was too timid, because it did not include an overall condemnation of nuclear weapons, whereas the West thought that a ban which was not backed up with any supervisory machinery would be illusory. As the Conference could not, without losing all credibility, summarily dismiss a regulatory draft of obvious humanitarian significance, it adopted a resolution inviting the ICRC to submit its draft to the governments. In fact, the project was scuppered.

That failure was to paralyze any ICRC attempt to develop humanitarian law for many years to come.

A fresh impetus came from elsewhere. Countries which had gained their independence after 1949 resented being bound by humanitarian rules which they had had no part in preparing. Moreover, many held that the Geneva Conventions and, more specifically, the rules relating to the conduct of hostilities, were poorly adapted to the new forms of conflict such as wars of national liberation and guerrilla warfare.

This dual claim for renewed consideration found strong expression within the United Nations, especially at the International Conference on Human Rights, which met in Teheran in 1968.

Fearing that its own responsibility — and that of the International Red Cross and Red Crescent Movement — for the development of international humanitarian law might slip into the hands of a political organization, namely the United Nations, the ICRC took up the task once again and announced that it would initiate a new revision of humanitarian law.

In 1971 and 1972, the International Committee convened two conferences of Red Cross experts and two conferences of governmental experts to that effect.

It was immediately evident that it would be unwise to start hammering at the 1949 Conventions, since it was by no means sure that the international community would be able to agree on new provisions. In fact, the Conventions themselves were not a problem. It was more a question of making good their shortcomings. The natural solution therefore lay in adopting Additional Protocols to them.

The drafts prepared by the ICRC after the consultations of 1971 and 1972 were submitted to the Diplomatic Conference on the Reaffirmation

and Development of International Humanitarian Law applicable in Armed Conflicts, which was convened by the Swiss government as the depositary of the Geneva Conventions. The Conference held four sessions from 1974 to 1977 and adopted two Protocols additional to the Geneva Conventions of 1949: Protocol I to improve the protection of the victims of international armed conflicts, and Protocol II to improve the protection of the victims of non-international armed conflicts.

The main achievement of the Additional Protocols was to codify rules relating to the protection of the civilian population against the effects of hostilities.

The "gap" in the 1949 Conventions, which had been so sharply criticized by the Soviet delegation, was thus filled.

By the kind of paradox which often occurs in history, the provision which had given rise to the most heated discussions and which equated wars of national liberation with international armed conflicts has to this day never been put into practical application.

## **From the Eighteenth to the Twenty-Fifth International Conference of the Red Cross (1952-1986)**

Despite the political neutrality which it recognized as one of its fundamental principles, the Red Cross and Red Crescent Movement was unable to remain unaffected by the divisions and disputes of the Cold War.

That was already apparent at the Eighteenth International Conference of the Red Cross, meeting in Toronto in 1952, where the debates were dominated by the passions unleashed by the Korean war. The following conference, which met in New Delhi in 1957, split shamefully over a purely political question, that of Chinese representation.

Despite the new Statutes of the International Red Cross, adopted in Toronto, the International Red Cross was on the verge of breaking up.

Those divisions made it clear that there was an urgent need to agree on the formulation of a few universally accepted fundamental principles, setting out the main guidelines of the Movement and thus complementing the Statutes, the main purpose of which is to define the relations between its component institutions.

The ICRC and the League therefore set up a Joint Commission, which, making valuable use of the distinguished work of Max Huber and Jean

Pictet, succeeded in drawing up seven Fundamental Principles. These were adopted by consensus by the Council of Delegates, meeting in Prague in 1961, then by the Twentieth International Conference of the Red Cross, meeting in Vienna in 1965.

These Principles really constitute the basic charter of the Movement. Their mandatory nature is recognized by all the Red Cross and Red Crescent institutions and there has never really been any question of revising them. In fact, does not the moral authority of the Fundamental Principles also derive from the recognition they have been granted over a growing period of time?

This basic charter was all the more necessary in that the unity of the Movement continued to be threatened by the divisions of the Cold War.

Strangely enough, it was on the issue of peace that the Red Cross nearly broke apart. Following the line adopted by the Soviet government, the National Societies of the Socialist countries tried to turn the Red Cross into a forum for the denunciation of aggression, for which, by definition, only the "capitalist States" could be responsible. While the Red Cross cannot but condemn a war of aggression, it is equally clear that the Movement cannot label any specific government as the aggressor without creating a rift in its own ranks and without denying its Fundamental Principles. It was also clear, moreover, that the Red Cross could not give an opinion on the origin of armed conflicts without jeopardizing its possibilities of bringing help to the victims.

These initiatives threatened both the League and the ICRC. However, as the League Secretariat could not take sides in a dispute between two groups of member Societies, it was mainly the ICRC, as guardian of the Fundamental Principles of the Red Cross and Red Crescent, which endeavoured with the help of a few National Societies to restore the unity of the Movement. It managed to do this by demonstrating that in order to achieve the necessary credibility, any resolution concerning peace had to be adopted by consensus. The unity of the Movement was thus preserved, and the initiatives were brought back to a common denominator acceptable to all.

The Statutes of the International Red Cross, as revised in 1952 by the Toronto Conference, have successfully passed the test of time and the National Societies of the Socialist countries, which had voted against their adoption because of the role the Statutes assigned to the ICRC, finally gave it their support. In April 1982, however, the League's Board of Governors called for a further revision of the Statutes of the International

Red Cross. The proposed changes were essentially terminological, since the expression "International Red Cross" was replaced by "International Red Cross and Red Crescent Movement", which appeared to be more in line with the principle of the National Societies' equality. On the other hand, the basic structure of the Statutes and the division of tasks among the Movement's components were left unchanged. The revised Statutes were adopted by consensus by the Twenty-Fifth International Red Cross Conference, meeting in Geneva in October 1986.

## The International Committee of the Red Cross and the preservation of peace

The Cold War was the result of an ideological confrontation between two economic and political systems which were opposed in every respect. It was reflected in a series of localized conflicts occurring along all the dividing lines between the two blocs, such as in Korea, Indochina, the Near East and southern Africa.

But it was also a continuing rivalry between two military powers — the United States and the USSR — whose nuclear arsenals guaranteed them a superiority that the other States were unable to contest and which possessed ample means of destroying each other and dragging the whole of mankind with them in their mutual annihilation.

For over forty years, the world lived under the constant threat of this collective suicide; gigantic material resources and a wealth of human intelligence were devoted to perfecting those arsenals and to preserving the balance of terror on which the maintenance of peace and the future of mankind depended.

Although the threat of nuclear annihilation was brandished only on rare occasions, such as the Suez conflict and the Yom Kippur war, it was nonetheless a constant factor in the reckoning of strategists and statesmen.

It was during the Cuba crisis in October 1962, however, that the world was really brought to the brink of a third world war when President Kennedy decided to oppose, if necessary by force, the installation in Cuba of Soviet missiles which would have upset the strategic balance between the two blocs and would have constituted a serious threat to American cities. To begin with, the United States President blockaded the island and ordered United States naval forces to intercept Soviet ships heading for Cuba, which were suspected of transporting strategic missiles. This the Soviet Union considered unacceptable and described as a "*casus belli*".

The world held its breath as it charted the advance of Russian and American ships across the sea.

Finally, the United Nations Secretary-General, U Thant, managed to resolve the crisis by proposing that neutral inspectors, agreed by both parties, would inspect the Soviet ships sailing across the Atlantic in order to certify that they carried neither rockets nor atomic bombs.

By successive eliminations, it was the ICRC in the end which was designated to carry out the inspection.

Although the task went well beyond the framework of its traditional mandate, the International Committee felt that it could not step aside when the future of mankind was at risk. It therefore agreed to appoint neutral inspectors, on condition that the three States directly concerned, the United States, the USSR and Cuba, would give their consent.

It had started to recruit the inspectors when the news broke that the Soviet ships had turned back.<sup>7</sup>

The crisis was over. The fact nevertheless remained that at a time when the Cold War was threatening to degenerate into nuclear disaster, it was the ICRC which was called upon as the only institution whose neutrality and impartiality were recognized by both Washington and Moscow.

## **From the fall of the Berlin wall to civil war in Bosnia-Herzegovina**

The bipolar system produced by the Second World War collapsed with the fall of the Berlin Wall, followed by the break-up of the USSR.

Unfortunately, the end of the Cold War did not bring with it the general appeasement which had been hoped for.

The occupation of Kuwait and the subsequent Gulf War seriously threatened world stability. But even more so, the end of the Cold War unleashed a series of conflicts, which could not have occurred at the time when the two major powers kept control of their empires. In Yugoslavia, in the Caucasus and in Central Asia, long-repressed antagonisms broke out in a surge of hatred and violence.

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<sup>7</sup> *Annual Report*, ICRC, Geneva, 1962, pp. 31-35.

Many older conflicts, such as wars of religion and ethnic confrontations, flared anew as the ideological varnish cracked, revealing endogenous causes which had previously been glossed over. Having lost the support of external backers, the belligerents tried to finance their wars by holding the populations to ransom and by joining forces with common-law criminals in major crime and drug trafficking operations.

Moreover, the Cold War had imposed a bipolar approach, regardless of the real causes of conflicts, since each of the opposing parties sought the support of one of the blocs. That external pressure has now disappeared, leading to a proliferation of parties and factions.

In some instances, structures of government have collapsed altogether. The breakdown of public services and the disintegration of the law enforcement authorities have given free rein to a myriad of clans and factions, while common crime has taken the place of political action. In these situations of total anarchy, humanitarian institutions seeking to help the needy population are ultimately held hostage to the self-seeking purposes of marauding groups.

As a result, the International Committee finds itself in a paradoxical situation: whereas it is much more widely accepted than ever before, it is faced with operational difficulties which all too often paralyse its efforts. Political leaders appeal to its services, but cannot guarantee the safety of its delegates or its convoys.

Despite these difficulties, ICRC operations have continued to grow, to an altogether unprecedented extent. The ICRC is engaged in more theatres of operation, is represented by more delegates and has distributed more relief than at any other time, even during the Second World War. The professional approach of its delegates is very widely respected and its diplomatic credibility is rated highly, as shown by the permanent observer status granted to it by the United Nations General Assembly on 16 October 1990. Its competence in the development of humanitarian law has also been fully recognized.

Paradoxically again, however, at the very time when the operational capacity and international credibility of the ICRC are stronger than ever, it is running into opposition within the Movement, as it did after the First World War and even more so after the Second. Long-shelved plans are being revived, such as placing the International Committee and the League under the tutelage of a National Societies Commission, or merging the ICRC and the Federation, or even simply doing away with the ICRC altogether. The division of duties and responsibilities, as confirmed by the

revised Statutes of 1986, is no longer respected. It is being proclaimed that the usefulness of the ICRC's role as a neutral intermediary has ceased, now that the Cold War has ended.

It would be naive to attribute these attacks entirely to envy, although that is clearly one of the factors involved.

The historian feels bound to point out that the ICRC's mandate, which is an outcome of history, has always been brought into question in times of upheaval. That happened in 1919 and even more so in 1945. We are now probably going through a further period of upheaval due to the end of the Cold War and the search for a new world equilibrium. History also shows that such attacks against the ICRC have seriously jeopardized the unity of the International Red Cross and Red Crescent Movement.

On the other hand, the current situation differs from former crises in one essential point, namely the fact that at the end of both the First and the Second World Wars, the Red Cross was without doubt the foremost international humanitarian organization: it was even practically the only one.

This is no longer so today and the Movement should understand that it cannot afford to indulge in domestic quarrels without undermining its international position. Other institutions have acquired a standard of professionalism and competence which would enable them to take over from a divided Movement, not to mention that intergovernmental organizations and many States are planning to conduct their own humanitarian operations.

It is therefore high time for the International Red Cross and Red Crescent Movement to recover its unity by respecting the complementary nature of the mandates of its component bodies, and to turn its attention resolutely towards dealing with the challenges of the future. This is something the world is all too sure to need.

François Bugnion, Arts graduate and Doctor of Political Science, entered the service of the ICRC in 1970. He served the institution in Israel and the occupied territories (1970-1972), in Bangladesh (1973-1974) and more briefly in Turkey and Cyprus (1974), Chad (1978), Viet Nam and Cambodia (1979). Since 1989, he has been Deputy Director of the ICRC Department for Principles, Law and Relations with the International Red Cross and Red Crescent Movement. He is the author of: *Le Comité international de la Croix-Rouge et la protection des victimes de la guerre* (ICRC, Geneva, 1994).

### **ACCESSION TO THE PROTOCOLS BY THE REPUBLIC OF HONDURAS**

The Republic of Honduras acceded on 16 February 1995 to the Protocols additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) and Non-International Armed Conflicts (Protocol II), adopted in Geneva on 8 June 1977.

Pursuant to their provisions, the Protocols will come into force for the Republic of Honduras on 16 August 1995.

This accession brings to 136 the number of States party to Protocol I and to 126 those party to Protocol II.

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### **DECLARATION BY THE SLOVAK REPUBLIC**

On 13 March 1995 the Slovak Republic made the following declaration regarding its recognition of the competence of the International Fact-Finding Commission.

In accordance with Article 90, paragraph 2 (a), of Protocol I of 1977 additional to the Geneva Conventions of 1949, the Slovak Republic declares that it recognizes *ipso facto* and without special agreement, in relation to any other High Contracting Party accepting the same obligation, the competence of the International Fact-Finding Commission to enquire into allegations by such other Party.

The Slovak Republic is the forty-third State to make the declaration regarding the Fact-Finding Commission.

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## ACCESSION TO THE PROTOCOLS BY THE REPUBLIC OF CAPE VERDE

The Republic of Cape Verde acceded on 16 March 1995 to the Protocols additional to the Geneva Conventions of 12 August 1949, and relating to the Victims of International Armed Conflicts (Protocol I) and Non-International Armed Conflicts (Protocol II), adopted in Geneva on 8 June 1977.

Pursuant to their provisions, the Protocols will come into force for the Republic of Cape Verde on 16 September 1995.

This accession brings to 137 the number of States party to Protocol I and to 127 those party to Protocol II.

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## DECLARATION BY THE REPUBLIC OF CAPE VERDE

On 16 March 1995 the Republic of Cape Verde made the following declaration regarding its recognition of the competence of the International Fact-Finding Commission.

In accordance with Article 90, paragraph 2 (*a*), of Protocol I of 1977 additional to the Geneva Conventions of 1949, the Republic of Cape Verde declares that it recognizes *ipso facto* and without special agreement, in relation to any other High Contracting Party accepting the same obligation, the competence of the International Fact-Finding Commission to enquire into allegations by such other Party.

The Republic of Cape Verde is the forty-fourth State to make the declaration regarding the Fact-Finding Commission.

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### **THE NAZI DOCTORS AND THE NUREMBERG CODE**

*Medical experiments on human beings*

In a work entitled *The Nazi Doctors and the Nuremberg Code — Human Rights in Human Experimentation*,<sup>1</sup> George J. Annas, Professor of Health Law and Director of the Law, Medicine and Ethics Program at Boston University Schools of Medicine and Public Health, and Michael A. Grodin, Associate Professor of Philosophy, Medicine and Public Health, and Associate Director of the Law, Medicine and Ethics Program at Boston University Schools of Medicine and Public Health, retrace the role of Nazi doctors in medical experiments on human beings, particularly on detainees in concentration camps. Using American and German archives, they describe the trial of twenty of these doctors and three of their accomplices who appeared before the American Military Tribunal I in Nuremberg between October 1946 and August 1947.

In their study, the authors observe that the experiments carried out by the Nazi doctors stemmed from the practices of nationalist physicians who, even before the 1920s, belonged to the racial hygiene movement. In 1929 the National Socialist Physicians' League was founded to coordinate Nazi medical policy and, by January 1933, nearly 3,000 doctors, i.e. 6 per cent of the profession, had joined the League. Its policy concentrated mainly on three areas:

- the "Sterilization Law", which allowed the forcible sterilization of anyone suffering from "genetically determined" illnesses, including feeble-mindedness, schizophrenia, epilepsy, genetic blindness, deafness and alcoholism;
- the Nuremberg Laws, which excluded Jews from citizenship and prohibited marriage or sexual relations between Jews and non-Jews;
- euthanasia programmes for patients judged to be incurable.

The authors make a point of showing the extent to which the medical community was involved in the Nazi programme of human experimentation,

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<sup>1</sup> George J. Annas and Michael A. Grodin, *The Nazi Doctors and the Nuremberg Code — Human Rights in Human Experimentation*, Oxford University Press, Oxford, 1992, 371 pp. plus lists, a diagram and photographs.

saying that the 23 accused who appeared before the Nuremberg Tribunal represented only a small percentage of the perpetrators — doctors and non-doctors — of experiments on human beings.

During the Doctors' Trial in Nuremberg, the prosecution pointed out that there had been hundreds of thousands of victims and, drawing on original documents from the archives of the concentration camps and on testimony given, it came to the conclusion that at least 11 types of experiments had been carried out, notably into the effects of high altitude and low pressure, freezing, malaria, bone regeneration and transplantation, sterilization and typhus.

The Doctors' Trial led to the establishment of the Nuremberg Code. It sets out the basic conditions and ethical standards under which experiments may be carried out on human beings. In the latter part of their book, the authors concentrated on the influence of the Nuremberg Principles on the subsequent development of international law, American law and modern medical research.

It is of interest to recall that after the Doctors' Trial, and in the absence of diplomatic relations between the Federal Republic of Germany, on the one hand, and Poland and Hungary on the other, the ICRC acted as a neutral intermediary between these countries from 1960 to 1970 on behalf of nationals of the latter two who had been subjected to what were designated as pseudo-medical experiments in the Nazi concentration camps and received financial compensation from the Federal Republic, via the ICRC, to help ease their plight.

From 1961 to 1972, a Neutral Commission appointed by the ICRC awarded 1,701 survivors of pseudo-medical experiments assistance totalling DM 50,845,000. However, in 1972, numerous requests from Polish victims had not yet been examined by the Neutral Commission. In November 1972, a compensation agreement was signed at ICRC headquarters between the Government of the Federal Republic of Germany and the Government of the Polish People's Republic for the Polish victims of pseudo-medical experiments carried out in Nazi concentration camps during the Second World War. In accordance with this agreement, the Government of the Federal Republic of Germany paid DM 100 million to the Polish Government to be allocated to the victims of pseudo-medical experiments who had not yet received any financial aid.<sup>2</sup>

*Françoise Perret*

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<sup>2</sup> In this connection, see "On behalf of victims of pseudo-medical experiments — Red Cross action" in *IRRC*, No. 142, January 1973, pp. 3-21.

## WAR AND LAW SINCE 1945

The British historian Geoffrey Best has written a work that affords new insights into war and its limits as defined by the law. In *War and Law Since 1945*\* he undertakes to show the relationship between civilization and war. His basic premiss is that civilization always seeks to impose restrictions on the violence of war in order to reduce to a minimum the resulting loss of life and destruction of civilian property. The author is interested above all in whether civilization succeeds in this: do the restrictions the law lays down actually exert a moderating influence on those who wage war, and do they make military operations less cruel and provide broad protection for those affected by the fighting? In short, to what extent are the rules of international humanitarian law actually reflected in practice?

This is not the first time that Geoffrey Best has ventured into this legal domain. In *Humanity and Warfare — the Modern History of the International Law of Armed Conflicts* (London 1980) he laid the basis for a more comprehensive view of international humanitarian law than can be accomplished by means of a purely rule-oriented analysis of existing texts. Taking the European Enlightenment as his starting point, Best told the recent history of humanitarian law. In his new 400-page book he continues his study of that law's place in history and explains the latest developments, casting new light on the provisions applicable today. The many cross-references concerning both military and general history as well as an incredible wealth of factual material make this book an interesting read. Best describes himself as a historian who specializes in the law of war and endeavours to explain things as clearly as possible. He explicitly disclaims the mantle of the lawyer, to whom he ascribes a limited and one-sided view, and reaches out to the non-specialist, more general reader to describe international humanitarian law as it really is.

Part I of the book sets the stage for his account of modern humanitarian law by giving a historical analysis of the ideas from which it stemmed. Best begins with Jean-Jacques Rousseau and ends with the war-crimes trials in Nuremberg and Tokyo. For example, he reminds his readers that the international humanitarian law applicable today derives almost exclusively from European and Mediterranean sources. Despite its regional origin, the well-developed European system of humanitarian law has spread world-wide, probably because the ideas and principles on which it is based do not seem alien to non-European cultures and civilizations but contain solutions to problems that arise in like or at least similar fashion everywhere, namely how to limit the violence of war so that survival is ensured.

\* Geoffrey Best, *War and Law Since 1945*, Clarendon Press, Oxford, 1994, 434 pp.

Most of the book is devoted to the law's development since the Second World War: Part II, entitled "Reconstruction of the Laws of War, 1945-1950", is centred on the making of the four Geneva Conventions of 1949, whilst Part III, "Law and Armed Conflict since 1950", gives particular attention to the two Additional Protocols of 1977. For the law, the end of the Second World War prompted many changes, and the author endeavours to help us see the pattern that emerged. The founding of the United Nations, the adoption of its Charter as the basis for international law, the hearing finally given to demands for effective international protection of human rights, the war-crimes tribunals in Nuremberg and Tokyo and the recasting of international humanitarian law in the 1949 Geneva Conventions are but the most important elements in that pattern. It would be foolish to view these developments in isolation and the author gives an absorbing account of how each influenced the other. Best makes the relationship between protection of human rights and the rules of international humanitarian law particularly clear: he speaks of an enriching alliance between the two systems, with both aspiring to protect the human being *in extremis*. As we know, Article 3 common to all four Geneva Conventions unmistakably enshrined and convincingly legitimized this alliance. As a counter-example Best cites Article 5 of the Fourth Geneva Convention, which disregards the most fundamental human rights demands by allowing protected persons to be held *incommunicado* in occupied territory, and this despite the then very recent tragic experience of such unacceptable practices during the Second World War. The reader learns something of the background to this aberration by the lawmakers of 1949.

The table of contents for the two main sections of the book reads like a list of the legal issues that arise time and again when it comes to actually implementing international humanitarian law. The general reader will learn a great deal, not only about the rules themselves but also about the practical problems involved in their transposition into legal reality. The author has assembled much factual material from the Second World War and also from the 1990-91 Gulf War. Experts in international humanitarian law will find much stimulating discussion but nothing that will add substantially to their understanding of the Geneva Conventions or their Additional Protocols. Best largely shares the prevailing views on the principal issues raised in connection with these six humanitarian treaties and with the rules of customary law. But the book is enlightening and at times very impressive, for instance the author's remarks on the prohibition of perfidy — a perfect example of the insights that can be gained from an analysis penned by someone who is "more than a lawyer".

The international law expert may nevertheless wonder at times whether the often proclaimed broader approach really does yield so many new insights. He then also wonders whether sometimes too much is being 'understood', thereby merely justifying the *status quo*. An example is the disappointing commentary on the 1980 Weapons Convention, which can hardly be described as anything even half-way approaching an adequate remedy for such abominable practices as the use of anti-personnel mines. He may also be startled by the somewhat

superficial treatment, and ultimately negative assessment, of 1977 Additional Protocol II (on non-international armed conflict). Has Best been deserted by his sense of political and historical perspective when he judges a text to be unsatisfactory merely because it lays down too few specific rules? In Protocol II, has not political pressure brought into being a humanitarian treaty adopted by consensus and which, precisely because of its simplicity, has some chance of being complied with by the parties to civil war?

Geoffrey Best's new book gives much food for thought to anyone interested in humanitarian law. It is well worth reading.

*Hans-Peter Gasser*

### THE GULF CRISIS

*From prohibition of the use of force  
to its authorization\**

Mr Sayegh's work is based on the thesis that he wrote for his doctorate in law soon after the second Gulf War. It was devoted not to the "war" but to "crisis"—something that may seem surprising to jurists unaccustomed to considering such concepts. The author has nevertheless done justice to his subject, aided by his knowledge of Arabic, French and English, as can be seen from the bibliography and the list of sources consulted. The study is intended to "help explore the development of the use of force and the changes that this has brought about in the United Nations system" (p. 26).

The chronology placed in the early pages of the study (pp. 16-19), even before the introduction, shows us the orientation of the author's research, which is confined to the "crisis" that lasted from 2 August 1990 (date of the invasion of Kuwait) to 16/17 January 1991 (beginning of the war against Iraq).

As we know, this was a period of unprecedented activity on the part of the United Nations Security Council, which adopted a series of resolutions, the first (resolution 660 of 2 August 1990) condemning the invasion and the last (resolution 678 of 29 November 1990) authorizing the use of "all necessary means" to implement the previous resolutions.

\* Selim Sayegh, *La crise du Golfe: De l'interdiction à l'autorisation du recours à la force*, Librairie Générale de Droit et de Jurisprudence, Paris, 1993, 544 pp.

To explain and analyse the "crisis" as a whole, Mr Sayegh looks at the history of the complex relations between Iraq and Kuwait, identifying the regional and international considerations involved. The first part of the book (pp. 31-275) sets out the basic elements of this history, going back to the 18th century and thus enabling the reader to measure the full significance of the August 1990 invasion, the various reactions which it triggered and the main arguments put forward by Iraq to justify its action against Kuwait (historic rights, economic aggression and assistance to a newly installed and friendly Kuwaiti government). According to the author, these arguments have no legal basis. Since the way the crisis developed cannot be explained by legal considerations alone, other factors must be cited to help the observer understand the reactions of Washington and London in particular, whose economic, political and strategic interests in the Gulf were affected and who immediately acted on the basis of their alliances, in addition to the action taken within the United Nations system. Despite the differences that exist between the former type of action and the latter, the two can be reconciled under Chapter VIII of the Charter itself.

The author divides the crisis into three stages: the first marked by resolution 660, the second by resolutions 661, 665, 666, 667 and 670 and the third by resolution 678. Despite a certain "conciliatory dimension" in resolution 660, the escalation option prevailed, beginning with economic coercion (resolution 661 of 6 August decreeing the embargo) before proceeding to military coercion (resolution 665 of 25 August authorizing the blockade and particularly the above-mentioned resolution 678).

These two forms of coercion are examined in the second part of the study, entitled "The developing crisis -- gradual legalization". The author analyses resolutions 661, 665 and 678, but also considers other texts, such as Articles 42 and 51 of the United Nations Charter and Security Council resolutions 664, 667 and 674. In noting certain similarities between resolutions 665 and 678, Mr Sayegh observes that by adopting the latter text, "the Security Council gradually relinquished its essential role of maintaining peace and security, by delegating its authority to States" (p. 492) and by giving the coalition "an unlimited mandate to implement resolution 660 and the subsequent resolutions" (p. 496). This is the inevitable consequence of the fusion between the centralized reaction as expressed by the Security Council and the decentralized reaction orchestrated by Washington. Given the author's decision to confine his study to the "crisis", the book ends with an interesting chapter on resolution 678 (pp. 475-502), in which he states that in authorizing the use of force the Security Council acted on the basis of neither Chapter VIII nor Articles 42 *et seq.* of the Charter. Moreover, resolution 678 goes beyond Article 51 on the right of self-defence, and the resulting situation is one of "self-help with support from one's allies", rather than of "self-defence with support from one's allies", a fact which casts doubt on its legitimacy under international law (p. 500). The political consequences of that resolution are examined briefly, and the author concludes by broaching issues connected with the dialectic between law and force, as well as other questions

both retrospective (end of the Cold War and its implications) and prospective (relations between Iraq and Kuwait).

It is nevertheless regrettable that the concept of "crisis", despite the fact that it draws on other disciplines such as history and political science and thereby enriches the work, has restricted the author to the area of *jus ad bellum* and has even led him to assert that resolution 678 also implied a kind of "frozen *jus in bello*" (p. 501). For under international law this "crisis" is the continuation of an international armed conflict which broke out on 2 August 1990 and made applicable the relevant provisions of *jus in bello*. From that date onward, the human consequences of the conflict were immense in Kuwait and Iraq and even elsewhere (the plight of the civilian population, internees, prisoners of war, foreign nationals, damage to property, effects of the embargo and the blockade, etc.).

Nevertheless, the abundant and very useful information provided, the analysis of the role of the Security Council and of some of its relevant resolutions, and the detailed account of the positions of the main protagonists in the "crisis" are presented with clarity and precision, and this makes Mr Sayegh's work a valuable tool for those interested in studying this major conflict, the implications of which will mark international relations for a long time to come, going far beyond the regional context or that of relations between two neighbouring Arab States.

Ameur Zemmali

### DÉRIVES HUMANITAIRES: ÉTATS D'URGENCE ET DROIT D'INGÉRENCE

*Humanitarian Action off Course:  
States of Emergency and the Right to Intervene*

Now that the UNOSOM II troops have withdrawn from Somalia — amid quite harsh criticism from the press — the work *Dérives humanitaires: états d'urgence et droit d'ingérence*<sup>1</sup> is even more highly recommended owing to the clarity of its structure and arguments.

Published as the first issue of *Nouveaux Cahiers de l'IUED* by the Graduate Institute of Development Studies in Geneva, this book of approximately

<sup>1</sup> *Dérives humanitaires: états d'urgence et droit d'ingérence* (Humanitarian Action off Course: States of Emergency and the Right to Intervene), ed. Marie-Dominique Perrot, Institut Universitaire d'Etudes du développement, Geneva (Paris: PUF), April 1994, 163 pp. (in French only).

150 pages contains a multidisciplinary collection of essays on the subject of intervention — or interference<sup>2</sup> — on humanitarian grounds. The introduction, entitled *Propos*, with explanatory comments by Marie-Dominique Perrot, the editor of the publication, is followed by four sections: *Lignes* ("Main Themes"), *Controverses* ("Controversial Aspects"), *Paroles* ("Interviews") and *Points d'appui* ("Reference points").

*Lignes* begins with an essay by the jurist Bernhardt Graefrath, *Ingérence et droit international* ("Intervention and International Law"). Addressing the legal aspects of intervention, Graefrath points out that the problem of intervention on humanitarian grounds arises whenever it becomes necessary to breach the barrier of national sovereignty to help those who are in distress ... the scenarios are generally complex, with clear cut cases rare (p. 27).

In a very compact essay, *Origine de l'idéologie humanitaire et légitimité de l'ingérence* ("The origin of humanitarian ideology and the legitimacy of intervention"), Gilbert Rist questions the ideology of imposed intervention — interference — on humanitarian grounds. He is of the opinion that the values of "universalism", "individualism" and "survival of the fittest", as proclaimed in Enlightenment philosophy and in positivism, reflect an unmistakably Western ideology (pp. 36-7). Furthermore, by its association with standard Western thought, such an ideology "forms part...of the characteristic thinking of Western modernity which makes it possible to legitimize an unjustifiable action by claiming that it has indisputable value" (p. 45).

This same humanitarian "interference" — a contradiction in terms according to Rist — is the subject of Marie-Dominique Perrot's essay *L'ingérence humanitaire ou l'évocation d'un non-concept* ("Humanitarian 'interference', or the invoking of a non-concept"). She too is of the opinion that imposed intervention — interference — and humanitarian action each belong in totally different categories, concluding that, unless human lives are at stake, to link them is unacceptable to the social order because "everything happens as though the humanitarian powers wanted to share and promote sacrosanct values without taking the usual ritual precautions" (p. 61).

*Raisons d'Etat et raison humanitaire* ("Reasons of State and humanitarian rationale") is the title of Jacques Forster's essay, which goes directly to the point in addressing the problem of competition for humanitarian reasons, indicating the realities of such competition as well as the threat it poses to humanitarian action. Referring to the new role of the United Nations, Forster examines State humanitarianism, concluding that humanitarian action must neither be replaced by nor integrated into political action.

<sup>2</sup> The eustomary English translation of the French term "*ingérence humanitaire*" is "humanitarian intervention". Literally, however, "*ingérence*" would be translated as "interference". As the book is largely concerned with this connotation, the terms "interference" or "imposed intervention" have been used where necessary to facilitate understanding of the thoughts expressed in this book review.

In his *Ingérence utile et manipulée* ("Useful and manipulated intervention"), François Piguet analyses the involvement in Somalia. Noting that aid always arrives too late, he asks whether, when all is said and done, "structural emergency constitutes an adequate response to the decay of socio-economic structures in certain countries and the resultant conflicts" (p. 95).

In the *Controverses* section, Fabrizio Sabelli voices his disagreement with Marie-Dominique Perrot in his essay *L'ingérence humanitaire entre religion et politique* ("Humanitarian intervention: between religion and politics"). In his opinion, in sanctioning the concept of (imposed) intervention an attempt is made "to gradually eliminate every obstacle — and the State is a sizeable one — which hinders economic power from realizing its goal of a worldwide uniformity of conscience and institutions" (p. 99).

Referring to the essay by Gilbert Rist, Christian Comelieu poses the question: *Le bon samaritain a-t-il un avenir?* ("Is there a future for good Samaritans?"). In view of "the tragic and terribly efficient consequences of modernity", he considers humanitarian action to be a necessity, "to avoid disruption of incalculable dimensions" (p. 102).

The *Paroles* section contains interviews with Paul Grossrieder, ICRC Deputy Director of Operations: *Le CICR face à l'ingérence humanitaire* ("The ICRC vis-à-vis (imposed) intervention on humanitarian grounds"); Hans Schellenberg, Section Head of Swiss Development Cooperation: *Entre non-ingérence et besoin d'aider: l'humanitaire d'Etat* ("Between non-interference and the need to provide aid: State humanitarianism"); Jean-Philippe Rapp, television news journalist for Télévision Suisse Romande: *L'ingérence humanitaire et les médias* ("Intervention on humanitarian grounds and the media"); and lastly, Yves Audéoud, Head of the Africa Department at Caritas Suisse: *Savoir ou ne pas savoir intervenir, le cas de la Somalie* ("The wisdom to intervene or not: the case of Somalia").

These interviews are indicative of the highly important role played by the media in interventions which could be classified as interference on humanitarian grounds. In addition, Grossrieder rightly points out that nowadays the problem is not so much that of going into a country but of taking action once one is there. In his opinion, the early warning system rarely prevents war. For Hans Schellenberg, (imposed) intervention — or interference — consists in providing aid where everyone else has already done so, consequently forgetting about other victims, while the contrary involves placing humanitarian principles before political considerations. Jean-Philippe Rapp draws attention, in passing, to "the highly conventional language used by (media) professionals who are often more intolerant than the general public" (p. 123). On the other hand, for Yves Audéoud, "humanitarian aid is a very practical concept, since it is a means of using emotions to the advantage of domestic political considerations" (p. 130).

The final section, *Points d'appui*, consists of an essay by Delphine Bordier, *Ingérence humanitaire: un débat* ("Humanitarian intervention: a debate"), which contains a carefully considered summary of the leading opinions expressed on

humanitarian intervention/interference. Observations by Mario Bettati, Bernard Kouchner, Cornelio Sommaruga, Jean-Christophe Rufin, Rony Braumann and others provide a highly useful overview for a debate that continues to generate ideas and opinions. Afterwards comes a bibliography, along with background information on the training and professional status of the contributors to this book. This is a welcome addition, the only criticism being that it has been placed at the end rather than along with the author's name at the beginning of each essay.

Readers may be surprised by the critical tone of these essays. This is, however, the purpose of the collection which, given the title *Enjeux* ("What is at stake"), seeks to demystify as well as highlight the workings of power "which at times have become unfamiliar to us". Consequently, the authors of this brief collection offer us a lesson in humility, their response in keeping with a properly scientific approach to the subject.

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The *International Review of the Red Cross* is the official publication of the International Committee of the Red Cross. It was first published in 1869 under the title "Bulletin international des Sociétés de secours aux militaires blessés", and then "Bulletin international des Sociétés de la Croix-Rouge".

The *International Review of the Red Cross* is a forum for reflection and comment and serves as a reference work on the mission and guiding principles of the International Red Cross and Red Crescent Movement. It is also a specialized journal in the field of international humanitarian law and other aspects of humanitarian endeavour.

As a chronicle of the international activities of the Movement and a record of events, the *International Review of the Red Cross* is a constant source of information and maintains a link between the components of the International Red Cross and Red Crescent Movement.

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Arabic: المجلة الدولية للصليب الأحمر (since May-June 1988)

Selected articles from the main editions have also been published in German under the title *Auszüge* since January 1950.

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# INTERNATIONAL REVIEW

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## 26th INTERNATIONAL CONFERENCE OF THE RED CROSS AND RED CRESCENT

*MYTH AND REALITY*

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### **Refugees and displaced persons**

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**The contribution of the Emperor Asoka Maurya  
to the development of the humanitarian ideal  
in warfare**

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**1945-1995**

*The activities of the ICRC  
during the Cold War  
and its aftermath*

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# INTERNATIONAL REVIEW OF THE RED CROSS



18 SEP. 1995



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### **BEFORE, DURING, AND AFTER THE CRISIS**

The importance of promoting knowledge of international humanitarian law has been recognized since its beginnings. Dissemination was made an obligation for States by the Geneva Conventions of 1949 and their Additional Protocols of 1977.

This measure stemmed initially from something quite self-evident: there is little likelihood of a body of law being observed unless those whose duty it is to respect and apply it are familiar with it. The aim was two-fold: first the practical aspect — to respect and ensure respect for the law, and thereby prevent violations of its provisions; and secondly the moral aspect — to contribute to the propagation of humanitarian ideals and a spirit of peace among peoples.<sup>1</sup>

The international community gave the ICRC a mandate to assist in the dissemination efforts undertaken by States. The ICRC has accomplished this task with the support of the National Red Cross and Red Crescent Societies and their International Federation. Activities to spread knowledge of international humanitarian law have intensified and diversified considerably over the last twenty years; many programmes have been set up in peacetime by the components of the Movement and guidelines have been issued indicating the dissemination methods best suited to different target audiences, primarily the armed forces.<sup>2</sup>

The ICRC for its part has built up a specialized dissemination structure that has enabled it to raise awareness in the various parts of the world

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<sup>1</sup> Resolution 21: "Dissemination of international humanitarian law applicable in armed conflicts", adopted by the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in International Armed Conflicts, 1977.

<sup>2</sup> On the evolution of dissemination methods and objectives, see the historical overview given below: Jacques Meurant, "The 125th anniversary of the *International Review of the Red Cross*: A faithful record. II. Victories of the law", pp. 282-304, at pp. 292-295.

through its network of regional delegations, with the support of the National Societies and the Federation. Literally thousands of workshops, courses, seminars, and exhibitions have been organized at the regional and national level to reach sectors of the population ranging from soldiers and officers to politicians, academic circles and the media. By way of example, this issue of the *Review* gives an account of the proceedings of recent seminars held for diplomats and international officials.<sup>3</sup> It also introduces the reader to an original form of teaching offered by the Jean Pictet Competition, which provides law students with the opportunity to test their knowledge of the law in real-life situations.<sup>4</sup>

These activities, which might be described as "traditional dissemination", are in constant evolution, adapting to keep pace with circumstances, just as the objectives of dissemination, under the pressure of tragic events, have had to be expanded to include obtaining guarantees of the safety of staff engaged in humanitarian work, ensuring acceptance of ICRC delegates by all belligerents, and facilitating access to victims.

Dissemination can be effective only if a dialogue is established between the disseminating agency and the competent authorities, which has not always been the case. The situation in this respect has deteriorated sharply in recent years owing to the total anarchy prevailing in an increasing number of conflicts and to the collapse of government and military structures in a good many countries where armed force has disintegrated into arbitrary acts and banditry. Not to mention the unacceptable increase in violations of the fundamental rules of humanitarian law.

This situation has caused grave concern in the international community, with the United Nations in particular seeking new ways to manage such crises. The Round Table held by the San Remo International Institute of Humanitarian Law in September 1994 and entitled "Conflict prevention — the humanitarian perspective" considered several aspects of preventive action and arrived at conclusions that the *Review* reports on below.<sup>5</sup> Notable among them is the observation that those responsible for international action must have the necessary political will to take appropriate

<sup>3</sup> See below: "Geneva, New York, Washington — Dissemination of international humanitarian law to diplomats and international officials", pp. 356-358.

<sup>4</sup> See below: "The Jean Pictet Competition", pp. 341-347.

<sup>5</sup> See below: "Conflict prevention — the humanitarian perspective. XIXth Round Table on current problems of international humanitarian law (San Remo, 29 August-2 September 1994)", pp. 348-355.

preventive measures. It is also desirable to obtain the support of the parties directly involved in a conflict. Finally, short-term preventive action, while producing immediate effects, may well fail to deal with the roots of the conflict because of the "emergency" factor; while long-term action may be more effective in addressing the underlying causes of the situation.

These new factors prompted the International Red Cross and Red Crescent Movement, and the ICRC in particular, to review its position and adopt a novel dissemination strategy focusing on preventive action, to be taken not only BEFORE the potential conflict, but also DURING the crisis and in its AFTERMATH, with a view to restoring peace.<sup>6</sup> While the fundamental objective of dissemination remains constant — to limit the suffering of victims and prevent violations of the law — there is an aim specific to each situation as it arises: before the conflict, action to prevent the emergence of violence; during the conflict, action to limit the spread of violence; and, after the conflict, action to prevent any breakdown of the peace process.

In each of these three situations, the means used are tailored to the circumstances. Emphasis is placed on using local resources, as demonstrated by the initiatives taken by the ICRC and National Societies in setting up programmes appropriate to the customs and language of the target audience. It cannot be stressed too strongly that every dissemination operation must be closely linked with the ethical and cultural values of the region concerned. The intercultural approach, so essential in dissemination, "thus consists in seeking in local symbolism the sometimes forgotten traces of humanitarian traditions and juxtaposing this heritage with humanitarian law so as to show the universality of these values".<sup>7</sup>



The Movement tends to adopt the same strategic approach for operational crisis management. Each situation, BEFORE, DURING, and AFTER the crisis, calls for appropriate preventive measures. In this issue an ICRC staff member shows, on the basis of many field operations

<sup>6</sup> See below the article by Jean-Luc Chopard: "Dissemination of the humanitarian rules and cooperation with National Red Cross and Red Crescent Societies for the purpose of prevention", pp. 244-262.

<sup>7</sup> *Ibid.*, p. 255.

corresponding to each of these three situations — and in the light of past mistakes — just how important it is to prepare the civilian population to cope with disaster situations and to give adequate training to delegates and personnel of the Movement's various components.<sup>8</sup>

In the midst of the crisis, the victims must be given the means to stay alive today and to survive tomorrow. Hence the importance of the multidisciplinary teams set up by the ICRC, comprising nurses, nutritionists, agronomists, sanitary engineers, logistics experts, and delegates with experience in a wide range of tasks.

But another major challenge is to prepare, during the crisis itself, for rehabilitation, which is the first step towards development. The combined approach of food aid plus emergency agricultural rehabilitation may have a preventive effect, tending to slow any further deterioration, promote food production systems and restore the dignity of the producers. It is up to the international agencies concerned to provide support for survival strategies when a population is subjected to a prolonged war. The ICRC therefore tries to safeguard agro-ecological systems, respect traditional practices, and set up emergency agricultural rehabilitation programmes based on indigenous knowledge and customary procedures.

Finally, after the crisis, partners must be found who are qualified to take over and continue rehabilitation work. The role of the National Societies, often the only structures in civilian society in a position to do this with the assistance of the Federation, is a vital one at this stage. Hence the need for the Movement to have strong and well-structured National Societies capable of setting up development strategies that tackle the root of the crisis. The “assistance-protection” model is increasingly being replaced by the “presence-dissemination-protection-assistance” approach, which is not yet fully appreciated but which will certainly be at the forefront of the Movement’s concerns in the future.<sup>9</sup>



As ICRC President Cornelio Sommaruga remarked in his closing address to the XIXth San Remo Round Table: “According to the proverb,

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<sup>8</sup> See below the article by François Grunewald: “From prevention to rehabilitation — Before, during, and after the crisis. The experience of the ICRC in retrospect”, pp. 263-281.

<sup>9</sup> *Ibid.*, p. 281.

'prevention is better than cure'. For the Red Cross, that means first and foremost taking action to help every victim, whether of conflict or of social ills, but it also implies rehabilitation, the constant endeavour to consolidate peace by positive action; secondly, it means undertaking, in complete neutrality and independence, a serious educational mission, through dissemination of international humanitarian law and human rights, the Fundamental Principles of the Red Cross and Red Crescent, and basic moral values centred around respect for human dignity".

*The Review*

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# Dissemination of the humanitarian rules and cooperation with National Red Cross and Red Crescent Societies for the purpose of prevention

by Jean-Luc Chopard

## INTRODUCTION

When it was founded, the ICRC, recognizing the unpredictable and inescapable nature of war, hoped that it would be able to alleviate the most harmful effects of war by providing protection and assistance and raising awareness<sup>1</sup> of international humanitarian law and the need to respect it. Thus all the activities undertaken by the institution are rooted in the reality of war — the degree of medical assistance and relief, for example, depends on the number of victims, while protection for prisoners is specifically given to “persons detained because of the situation”. Similarly, the ICRC’s Central Tracing Agency forwards family messages when normal communication channels are severed, traces people who have gone missing because of the conflict, and reunites family members separated by the events. The only ICRC activities that are not exclusively a response to needs resulting from war are the dissemination of knowledge of humanitarian law and principles, and cooperation with the National Red Cross and Red Crescent Societies.

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<sup>1</sup> In 1869, the final resolution of the 2nd International Conference of the Red Cross stipulated that “Knowledge of the Articles of the Geneva Convention must be disseminated as widely as possible, particularly among soldiers”.

## The preventive nature of dissemination and cooperation

Like the ICRC's other activities, the dissemination of humanitarian law was codified in the Geneva Conventions of 1949 and the Additional Protocols of 1977.<sup>2</sup>

Over the years, however, the preventive nature of dissemination has come to the fore. Whereas operational activities are only now tending to extend beyond the limits of the conflict, thus to begin in the phase before the actual outbreak of conflict and to continue in its aftermath,<sup>3</sup> dissemination has always essentially concentrated on those same phases. It was not until 1978, when three ICRC delegates were killed in a serious security incident in Rhodesia, that new operational objectives, namely to ensure the safety of personnel, to promote understanding for and hence acceptance of the ICRC and its work, and to facilitate access to victims, were adopted with a view to preventing violations of humanitarian law by spreading knowledge and awareness of it.

The preventive nature of cooperation in the development of National Societies is less evident. Originally, their role was to prepare themselves in time of peace to act as medical auxiliaries to the armed forces in time of conflict. Thus, as National Society volunteers were to be placed on the same footing as the armed forces' medical services in time of war, their task in time of peace was to prepare for emergency action. However, the epidemics which swept across Europe between the two World Wars and, more particularly, the desire for lasting peace after World War II radically changed the National Societies' original rationale for existence. With the support of the League of Red Cross Societies (now the Federation), they rapidly switched to providing medical and social assistance in peacetime. The ICRC, however, continued to cooperate with the National Societies in preparing for possible emergency situations. These two support systems have enabled the National Societies to gear their activities to the needs dictated by a given situation. For example, the Red Cross or Red Crescent Society of a country at war may intervene to meet the needs that arise,

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<sup>2</sup> Under the Geneva Conventions and the Protocols, the dissemination of humanitarian law is primarily the responsibility of the States, which, by becoming party to these instruments, undertake to spread knowledge of the law and to respect it. At the same time it is up to the ICRC to support these efforts, in accordance with the particular responsibility assigned to it by the Statutes of the International Red Cross and Red Crescent Movement (Art. 5, paras a) and g)).

<sup>3</sup> See article by F. Grünwald in this issue of the *Review*, pp. 263-281.

thereby complementing or supplementing the activities undertaken by the ICRC in its own domain, whilst if the country is at peace, the National Society gives priority to victims of natural disasters or serious socio-economic problems.

To sum up, apart from activities that are solely the responsibility of the ICRC, the scope of activities undertaken by the National Societies is determined by each Society's ability to respond to the most urgent humanitarian needs, regardless of whether they occur in a conflict situation or in time of peace. **Obviously, cooperation creates enormous possibilities for the implementation of preventive measures in time of peace.**

## The ICRC and the prevention of war

From the very beginning the ICRC has taken a realistic, practical approach and has concentrated on remedial activities. In his inaugural speech at the Geneva Conference of 1863, General Dufour stressed that the institution would strive to "render the consequences (of war) less terrible, rather than pursuing the illusion of eliminating war". Nonetheless, in addition to its wartime activities, the ICRC has also given much thought to ways of preventing war.

The prevention of war was first addressed by the Movement just after World War I, as evidenced by its appeal to the peoples of the world to combat the spirit of war. The appeal was made by the International Committee of the Red Cross and the League, and was adopted by the 10th International Conference of the Red Cross in 1921. The ICRC exercised extreme caution in dealing with the issue, its reticence being justified by two major concerns. Firstly, the conflicts of that time were primarily motivated by economic and political ambitions, and it is hard to conceive of the ICRC championing measures for the prevention of conflicts in a Europe dominated by the territorial conquests and re-conquests of the late nineteenth century. Such an aspiration would have been considered equally absurd during the Cold War conflicts, where supranational strategic interests and national ideological ambitions prevailed. Secondly, the very structure of war lent itself to effective action by the ICRC. The combatants were educated in the art of warfare and operated within a strict hierarchical system, whilst the ICRC was in contact with the highest echelons of command. It was thus able to put over its humanitarian message and ensure that its humanitarian work would be understood at every level. Battlefields were clearly identified, the distinction between

civilian objects and military objectives was respected, and the scope of intervention by the ICRC clearly delineated. Within this context, the ICRC focused most of its efforts on remedial action, taken during the actual conflict to alleviate the consequences of violence and limit the suffering caused. *Since the end of the Cold War, however, observers have repeatedly pointed out that the world is changing, and that this process is causing new types of conflicts to emerge.* If this is the case, the ICRC might have even less reason than it did in the past to distance itself from preventive measures, including measures for the prevention of conflicts.

## Changes in the humanitarian field

Changes in the humanitarian field may be summarized as follows:

1. Most of today's conflicts are not motivated by national or supranational interests but are the product of internal tensions, more often involving issues of identity than politics or ideology. People in the former Yugoslavia, Rwanda and Chechnya, for example, are fighting to defend or ensure the survival of their clan or community.
2. These "identity" conflicts have no territorial boundaries. The war is fought anywhere and everywhere, and affects civilians in particular. Urban violence is becoming the order of the day as confrontations occur with growing frequency in the villages and towns, especially poverty-stricken, densely populated districts.<sup>4</sup>
3. The combatants no longer make any distinction between themselves and civilians — a situation which leaves the ICRC somewhat at a loss. Whereas in the past the ICRC would traditionally negotiate with those in power and could rely on the authority of its high-level contacts to promote respect for humanitarian law at the lower levels of the hierarchy, today's conflicts present a very different picture. The worst violations of humanitarian law and principles are no longer committed by military personnel but by undisciplined irregulars and by civilians. Any civilian may be pressed into service by lawless bands of militia

<sup>4</sup> It should be noted that the ICRC finds it difficult to work in densely populated, poverty-stricken areas such as shanty towns. In Peru, for example, the delegation was forced to abandon its aid to victims of the violence that flared in the slums of Lima, since to assist such a small percentage of the population while two million other people all around were living below the poverty line would have been unthinkable. Yet identity conflicts and civil wars typically thrive in such surroundings.

or armed groups who, respecting neither God nor man, claim to be defending the integrity of the clan, ethnic community, or religious faith. It should be stressed that the religious factor, always acute in an identity crisis, can render the ICRC even more powerless to act, for religious fanaticism places a coherent and sacrosanct value system in direct opposition to humanitarian law, which is perceived as profane and — what is worse — neutral. And once the good and the bad (or Good and Evil) have been designated by God, what room is left for neutrality or impartiality? Crises with religious implications are further complicated by the notion of martyrdom — a very sensitive issue for an organization such as the ICRC to address since, in the eyes of fanatics, the ICRC is included in the rejection of anything Western.

4. Lastly, wars are no longer fought for the purpose of guaranteeing State or domestic security. In a situation where the most basic resources are in short supply, the goal is to destroy the other side in order to ensure one's own survival.<sup>5</sup> In some ways, today's conflicts resemble those of the Middle Ages, when capture often spelled death, when women and children were treated as the spoils of war, and when it was the practice of belligerents to destroy the enemy without further ado. The armed forces and senior government officials, formerly the ICRC's best contacts, can no longer be relied on alone to promote the letter or the spirit of international humanitarian law.

## Prevention rather than cure

Faced with anarchic violence, the ICRC and other humanitarian agencies do not know where to turn: they no longer have contacts in a position to pass their message from the upper ranks of the hierarchy down to its lowest levels; combatants are no longer clearly identified; the rules are no longer applied because the belligerents never learned them; and violence knows no limits, because governmental authority has given way to the arbitrary sway of the militias or terrorism. Within this context, the international community is making even greater efforts than the humanitarian organizations to find new means of crisis management. For example, in his *Agenda for Peace* the UN Secretary-General Boutros Boutros-Ghali calls for a whole range of preventive measures to meet the

<sup>5</sup> See Robert Kaplan's analysis of new types of conflicts, "The coming anarchy" in *Atlantic Monthly*, February 1994, pp. 44-76.

challenge of post-Cold War conflicts. At the regional level, the Organization for Security and Cooperation in Europe (OSCE, previously the CSCE) has taken a number of steps to create international mechanisms to help prevent conflicts; such mechanisms are justified by the OSCE Secretary General in these terms: "Uncontrolled inter-ethnic conflicts were an almost unknown phenomenon in the period of East-West confrontation. With their abrupt re-emergence, the international institutions were caught completely unprepared, without experience and basically without instruments, to deal with this challenge — thus new approaches have had to be developed".<sup>6</sup>

### **THE ROLE PLAYED BY COOPERATION AND DISSEMINATION IN CONFLICT PREVENTION**

The ICRC has developed a large number of dissemination and cooperation activities for the purpose of preventing conflicts. Some of these activities are described below.

#### **Preventive action**

The ICRC defines its role in the prevention of conflicts by setting objectives and determines the extent of its involvement by allocating resources. The objectives set and the means deployed depend on the respective situation.

##### **a) The objectives of preventive action**

The objectives of preventive action are determined by the type of situation in which the ICRC intervenes. A general distinction is made between three types of situation, according to three phases: towards conflict — during conflict — towards peace. The objective of preventing violations of international humanitarian law and limiting suffering is constant and unchanging, retaining its validity whatever the situation. In all three situations it is a continuum. Dissemination, on the other hand,

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<sup>6</sup> Dr Wilhelm Höynck, Secretary General of the CSCE, "CSCE works to develop its conflict prevention potential", *NATO Review*, April 1994, pp. 16-22.

places varying emphasis on its respective objectives at each phase of the conflict. In a pre-conflict situation, for example, cooperation and dissemination activities are both intended to prevent the outbreak of violence; during the conflict, the preventive<sup>7</sup> objectives are primarily to limit the extent of the violence; and once the conflict is over, activities are mainly designed to prevent a breakdown in the peace process. Therefore, it is important to identify the type of situation in which the ICRC is called upon to intervene so that its preventive role can be determined on this basis and on the basis of the resources available for fulfilling this role.

### b) The methods used

As a general rule, the term "prevention" is taken to imply negotiation, mediation, conciliation and arbitration. But political instruments for the peaceful settlement of conflicts are rarely employed by the ICRC,<sup>8</sup> since negotiating to resolve a conflict involves military, political and economic interests which it does not address. International and regional organizations like the UN and the OSCE, on the other hand, have bodies and procedures to deal with such issues.<sup>9</sup>

However, there are other categories of preventive action in which the ICRC can intervene. Through dissemination, it helps to prevent conflicts by promoting values such as tolerance and impartiality which are conducive to the establishment of a spirit of peace. Similarly, through cooperation with the National Societies, ICRC action can have an impact on certain causes of conflict.

Thus, the ICRC's preventive role varies, depending on the various stages in the development of conflict, which includes not only open war but also the phases leading up to and following the hostilities. Different terms are used to refer to these stages. The UN, for example, speaks of *peace-keeping*, *peace-making* and *peace-building*. The OSCE, on the other hand, refers to its activities in the pre-conflict phase as *early warning*, *early action* and *conflict prevention*. To designate the conflict phase, it uses the term *crisis management* and does not refer to preventive

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<sup>7</sup> Emphasis should be placed on the word *preventive* since, in time of conflict, dissemination also has operational objectives such as guaranteeing the safety of humanitarian activities and personnel, and facilitating access to victims.

<sup>8</sup> In particular, we might recall the role of the ICRC during the Cuba crisis (1962), in Santo Domingo (1965), and in El Salvador (1989).

<sup>9</sup> See the *Handbook for the peaceful settlement of differences between States*, United Nations, New York, 1992.

activities in the subsequent phase. For its part, the ICRC, underscoring its wish to contribute to prevention above all in situations closely associated with armed conflict, has chosen to refer to these situations as *towards conflict*, *during conflict* and *towards peace*. In these contexts, the ICRC engages in preventive activities through some forty specialist delegates in the field and through twenty or so regional delegations.

## Dissemination and cooperation in the “towards conflict” phase

This phase is a very dynamic one. Various degrees of tension may be observed, culminating in the state of emergency or so-called “open” conflict. In his address to the seminar on minorities and the prevention of conflicts, held at the Henry Dunant Institute in 1993, Professor Kux described four phases in the development of violence,<sup>10</sup> each of them recognizable by specific signs. Though the inventory of these signals is by no means exhaustive, observation of them helps in adopting advance measures to check any escalation.

During the initial phase, the first signs of impending conflict can be seen in the discrimination suffered by individuals because they belong to some specific group. They can take the form of public statements or street demonstrations. In the second phase, the expression of grievances leads to a mobilization of support for the cultural, social or ethnic characteristics of the group concerned. The speed of recourse to political and economic means to defend real or perceived rights depends on the speed with which the situation deteriorates (political instability, economic decline, border changes, massive migrations, the collapse of a dominant ideology, biased media campaigns, and so on). Then come the first violent demonstrations and the situation becomes polarized. Moderate leaders are replaced by more radical ones. Communication between groups diminishes, soon to be broken off entirely. The third phase is thus reached. The subjects of discord become highly emotive; political discourse is loaded with references to group identity; the emphasis is on differences rather than similarities. Groups threaten each other with the use of violence and then carry out their threats. One side organizes an armed group; the other reinforces

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<sup>10</sup> See the document *Minorities and prevention of conflicts: role of National Red Cross and Red Crescent Societies*, Henry Dunant Institute, Geneva, 1993, pp. 34-38.

its repressive measures. In the final phase, open conflict flares and a state of emergency is declared. Negotiations are deadlocked and demarcations of identity become battle lines.

The impact of preventive measures is inversely proportional to the rise in violence. At best, the greatest effort must be made during the first two phases, before violent demonstrations start to occur and above all before the parties feel threatened and replace moderate leaders by extremists.

To sum up, preventive measures by the International Red Cross and Red Crescent Movement can be taken at the point where the manifold causes of conflict converge. It is in such situations of political upheaval and shattered national solidarity, when political regulation is lacking and when social iniquity, ethnic exclusion and discrimination reign, that the ICRC and the National Societies can take action to prevent the situation from deteriorating into armed conflict.

### a) Contribution of National Societies

The National Societies,<sup>11</sup> supported by the Federation, are particularly well placed to respond to the first and second phases in the development of conflicts. Experience shows, however, that despite the great efforts which the Federation makes to support its members, the support is not enough and, more especially, the results obtained fall short of the challenges emerging in new types of conflicts. More than ever, there is a need to address humanitarian questions before conflict breaks out by calling on the indispensable help of local authorities or institutions. International organizations do not have the cultural affinities needed for a deeper understanding of the context (which would permit timely preventive action) nor immediate access to information on sources of local tension. It is up to local authorities or institutions to take the initiative before tensions degenerate into civil war or some other form of large-scale conflict. International organizations can step in only in individual cases as they do not have the means to take preventive action wherever necessary. On the other hand, because they are well aware of the limited effectiveness of humanitarian action in response to the anarchic savagery of recent conflicts, they can do more to help competent local bodies to sustain their preventive efforts. And also because there is every likelihood of identity conflicts multiplying throughout the world.

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<sup>11</sup> See Articles 3 and 6 of the Statutes of the Movement.

The National Societies and their members are the competent local organizations of the Movement. The introversion of cultures, the recourse to identity-centred ideology and the violent forms in which this is manifested are often explained as a reaction to isolation or to the exclusion of a community from political and economic life because of its ethnic or cultural characteristics. National Societies have the means to address this particular cause of violent upheaval by simple respect for the principles of the Movement and by bearing the need for operational efficiency in mind. Let us recall the situation of the South African Red Cross during the apartheid era, when it wished to go to the townships to give help to those injured in the riots, although its members, employees and volunteers were exclusively of the white race. To reproduce within its own structures the deliberate or unintentional discrimination of the State against a community is not only contrary to the principle of impartiality, but also helps to exacerbate the feelings of exclusion and isolation which are certainly the main reasons for promoting a heightened sense of group identity and its violent manifestations. Some National Societies have modified their recruitment procedures and their structures in order to maintain a balanced representation of the communities. In South Africa, all vacant posts are now widely advertised in all regions of the country. The selection of candidates is no longer decided according to ethnic criteria or qualifications already obtained but on the basis of their training potential. Finally, once recruited, employees are helped through continuous training. The Northern Ireland branch of the British Red Cross also advertises vacant posts widely without mentioning whether the region or district concerned is Catholic or Protestant. Candidates submit their applications and indicate their religion in a sealed envelope, which is opened only after the selection process is complete. The Malaysian Red Crescent Society has also had long experience of multiracial representation since the violent ethnic clashes of 1969.<sup>12</sup>

Tolerance and participation — the real antidotes to group identity conflicts — can also be promoted by other means. In 1989 UNICEF, in cooperation with the Lebanese Red Cross Society, organized a holiday camp in Lebanon for the young people of all the country's various communities. For a week, the children lived and played together, talked and shared experiences. The video which UNICEF made on this occasion is a poignant testimony to their discovery and growing understanding of

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<sup>12</sup> For further details of these various experiences, see *Minorities and prevention of conflicts*, op. cit., pp. 22-29.

each other, beyond prejudices and stereotypes. The Spanish Red Cross has also made efforts to promote tolerance and the acceptance of others among young people. It has conducted a campaign including leaflets, posters, and a TV advertisement. At the same time, it has approached schools with an educational role-playing series relating to understanding and communication between groups, communities, or peoples.

### b) Contribution of the ICRC

The ICRC's contribution to conflict prevention primarily takes the form of promoting knowledge and the implementation of international humanitarian law as being conducive to mutual understanding, tolerance, cooperation, and a durable peace between peoples. This principle has frequently been recalled by the ICRC during consideration within the Movement of its role in favour of peace.<sup>13</sup> In making known the humanitarian rules, the ICRC focuses on ethical and cultural values (myth, poetry, symbolism), and on politics and law. These various elements all have a bearing on prevention: ethics, law, and politics help to tame violence, just as serious economic and social instability (massive migrations, economic crises, etc.) serve to exacerbate it. Popular ethical codes and symbolism may include a moral culture of violence, reinforced by deeply entrenched reference values such as ethnicity or nationalism. This propensity to violence can be countered by the values of peace, humanism, or humanitarianism and tolerance. Political power, depending on historical interests or the constraints imposed upon it, may establish a hierarchy of such values, create legal norms, and adopt enabling measures. However, before beginning the political and legal revival of humanitarian values, it is necessary to demonstrate that they form part of the cultural heritage of the society concerned.

### c) Intercultural approach

The ICRC delegation in Cairo has pursued this approach in an exemplary manner. In particular, it has published calendars which retrace humanitarian thought in pre-Islamic and Islamic history. Thus, the first "cultural" calendar in 1993 drew its references from the historical chronicles of the Arab-Muslim world. The texts, set alongside the cor-

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<sup>13</sup> See in particular: *To Promote Peace — Resolutions on peace adopted by the International Movement of the Red Cross and Red Crescent since 1921* and the reports of the World Red Cross Conferences on Peace (Belgrade, 11-13 June 1975, and Åland/Stockholm, 2-7 September 1984).

responding provisions of international humanitarian law, largely consisted of injunctions by the Caliphs and the orders of army commanders setting out to war at the time of the Crusades. The 1994 calendar contained humanitarian quotations from Arabic literature and poetry. This year's calendar recalls agreements concluded between civilizations, some of the texts antedating Christianity and Islam. The intercultural approach thus consists in seeking in local symbolism the sometimes forgotten traces of humanitarian traditions and juxtaposing this heritage with humanitarian law so as to show the universality of these values.

The intercultural approach also finds expression through other channels of communication. The Cairo delegation has already produced two radio serials of thirty episodes which are broadcast in the countries of the Middle East, particularly during the holy month of Ramadan. The first series, based on the "Thousand and One Nights", is entitled "The Thousand and One Days". As in the original, the heroine has to save her life by telling a story every night to the king who is holding her captive. During the day, however, she escapes from the castle and sees the distress and violence in the world around her. When she returns to the king, she tells tales which reflect the injustices she has seen and shows how they can be remedied by acts of charity and inter-community solidarity. The second series, on the other hand, is based on real life incidents; it tells the stories of people who have received humanitarian aid or of those who are involved in it (volunteers from National Societies, ICRC delegates and local employees). The episodes have been produced, directed and recorded together with Egyptian professionals and actors.

The intercultural approach, the cornerstone of preventive efforts, is by no means the exclusive preserve of the Cairo delegation, though that was where the first systematic steps were taken. Now, more and more delegations — like the ones in Burundi and the Caucasus — are following suit. Other preventive approaches are also being taken in these projects: one is a completely new initiative designed to rally public opinion in support of respect for a minimum of humanitarian principles; the other seeks to encourage systematic instruction in the values underlying humanitarian law and the fundamental principles of the Movement as part of the primary and secondary school curriculum.

Concerned about the scale of the human tragedy affecting parts of Burundi since October 1993, the ICRC set up a series of meetings with leading civilians on the subject of "Burundi's humanitarian traditions: change and the possibilities for restoring their influence in the Burundi of today". The discussions resulted in the adoption of a "Declaration for the promotion of humanitarian conduct: appeal for a minimum of humanity

in situations of internal violence". The Declaration, which draws on international humanitarian law provisions, was formulated by the Burundians on the basis of traditional local proverbs in the African Great Lakes region. A national campaign was launched to publicize the Declaration, using a variety of teaching methods such as illustrated brochures, a play and a radio adaptation of it, and a video showing the text of the Declaration against a background of pictures filmed after the tragic events of October 1993. Other programmes are being carried out in the country's schools.

The Caucasus project is narrower in scope, for it is destined more specifically for schools and ministries of education. The ICRC contacted those ministries in certain countries of the former USSR and offered to prepare an instruction manual similar to the one drawn up by the Dissemination/Youth department of the Geneva section of the Swiss Red Cross, but adapted to the countries' particular traditions and culture. The manual is included in the teaching of the national language and the basic texts, presented in a form accessible to children, encourage tolerance, solidarity and the acceptance of others. It also contains interactive exercises relating to the pupils' immediate environment so that humanitarian values can be inculcated through experience and participation.

#### d) Politics and law

No description of the ICRC's work in the field of prevention would be complete without reference to politics and law. Political power, within its own limits, can adopt measures to protect and implement humanitarian law by giving political support for them and drawing up legal rules. The ICRC also intervenes at this level, particularly with the help of its regional delegations and by making proposals for systematic instruction in the humanitarian rules to be provided in academic circles in peacetime.

One of the first priorities of regional delegations is to encourage the authorities to adopt measures to implement international humanitarian law. These delegations can sometimes serve as an early warning system, thus enabling the ICRC to prepare for a possible emergency and to intervene very rapidly when necessary.

#### e) Towards more systematic dissemination and the search for local disseminators

Such is the scale and gravity of the task of ensuring respect for humanitarian law and the Fundamental Principles of the Movement that, in today's world, our approach must be to encourage local people to endorse humanitarian values and to undertake to propagate them. At its meeting on

20 October 1994, the ICRC's Executive Board approved a plan of action intended to reinforce a systematic approach to certain target groups. The document setting out the course of action ("To assist States to assume their treaty obligation to disseminate...") reaffirms the terms of the Final Declaration adopted by the International Conference for the Protection of War Victims (Geneva, 30 August-1 September 1993). The said obligation calls for an effort of systematic dissemination at national level, particularly to the armed forces, educational establishments, public administrations, and the population in general. The ICRC has also set itself the task of helping National Societies to systematize dissemination to all their staff and members, including volunteers. When addressing an external target group, these Societies will enjoy all the more credibility if their message is associated with some specific activity undertaken on that group's behalf.

The ICRC is gradually applying this systematic approach to dissemination in the field. Its staff for the "Eastern Europe and Central Asia" operational zone have already acquired considerable experience in this regard. Thus, apart from the programmes already launched in the schools of the Caucasus, a similar approach is currently being taken with regard to the National Societies, armed forces, and universities of that region.

All the experiences referred to here — and the list is far from exhaustive — illustrate just how far the ICRC is involved in preventing the emergence of violence through dissemination activities in the phase preceding conflict. Several of these activities, such as the national dissemination campaign in Burundi, have been developed in the light of recent events. However, the essence of these projects lies, on the one hand, in the rejection of a fatalistic view of inter-community violence and, on the other, in the conviction that such tensions can be resolved by means other than armed confrontation. The initiatives taken by the National Societies and the ICRC thus go beyond the latter's priority aim, which was to prepare for emergency situations, but also (the one is not possible without the other) make a real contribution to the prevention of conflicts.

## Dissemination during conflict<sup>14</sup>

During a conflict, the preventive aim of dissemination changes. It is no longer a question of preventing the *emergence* of violence but of

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<sup>14</sup> In the following lines, the question of cooperation has been deliberately left to one side. In a situation of armed violence, cooperation with the National Societies focuses on

preventing its *extension* and limiting the number of victims. The aim of preventing the emergence of violence can no longer be maintained since the parties have already effectively taken up arms and there are victims. In these situations, dissemination also includes operational aims.

Until 1978, when a serious security incident in Rhodesia cost the lives of three delegates, dissemination was concerned primarily with the prevention of violations of humanitarian law, in accordance with the recommendation of the 4th International Conference of the Red Cross in 1887 designed to "spread knowledge" (of humanitarian law). The 1978 tragedy sparked off a debate on the operational utility of dissemination to promote acceptance of the ICRC, guarantee the security of its personnel and facilitate access to victims. This period of reflection led to the ICRC Executive Board's adoption in 1990 of a dissemination policy with the specific aim of "helping to enhance the security and effectiveness of humanitarian action". Given the conditions on the ground in a situation of conflict, this immediate objective of security tends to predominate. Moreover, it must be stressed that most of the delegates specializing in dissemination are sent to areas of conflict.

In the heat of war, feelings run high among the combatants, their leaders, and the population as a whole. Dissemination then comes up against problems largely inherent in such an inflamed situation. War generates crime. With the disappearance of authority and the likelihood of punishment, the borders between legality and illegality become blurred. "Violence breeds violence and horror engenders horror".<sup>15</sup> Chaos reigns supreme when the very horror of an act offers the only chance of survival, as seems to have been the case in Rwanda. In the dynamics of conflict, where destruction of the adversary is often the primary objective, dissemination is diametrically opposed to that objective. The idea of educating regular or militia forces in time of war seems more unrealistic than the intention in time of peace "to train men to become men and to remain men even when they are combatants",<sup>16</sup> even if the act of dissemination has to be repeated. In a situation of conflict, delegates engaged in dis-

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their emergency preparedness by developing their capacity for remedial action (first aid, evacuation of the injured, etc.), rather than for the preventive action which is the subject of the present article. However, it remains important to find a means of ensuring that remedial action in emergency situations is also of long-term benefit in reinforcing the respective Red Cross or Red Crescent Society.

<sup>15</sup> Eric David, *Principes de droit des conflits armés*, Bruxelles, 1994, p. 533.

<sup>16</sup> *Ibid.*, p. 535.

semination can at best turn to their own heavy weapons. In the former Yugoslavia, for example, every conceivable item in the dissemination arsenal has been deployed to encourage at least a minimum of humane conduct: the creation of a network of delegates and local staff specializing in dissemination, TV advertisements, radio broadcasts, brochures, appeals in newspapers, educational sessions with the armed forces and other people bearing arms... And all for a result which, though difficult to evaluate, must be modest, given the extent of violations of the most fundamental humanitarian principles. There is a similar or even worse sense of impotence in Rwanda, where the ICRC's communication efforts have enabled it to remain "tolerated in the midst of the intolerable". Yet it has at least been able to bring help to a number of victims, though admittedly small.

However, this comment as to the very restricted impact of preventive dissemination during conflict must be placed in context. The situations referred to above are extreme cases. It can and does vary considerably on the ground, in the thirty or so theatres of operations in which the ICRC is present. In fact, the more violent and anarchic the situation, the truer the argument often put forward by the ICRC's operations staff, namely that operational activities are the best form of dissemination. Indeed, in the worst of circumstances, faced with fanaticism and a disorganized power structure that is no longer respected, where communication is no longer possible and authority has disappeared, the best way of propagating a spirit of mercy and respect for human dignity unquestionably lies in the example of impartial assistance. But the ICRC's inability to convince fanaticized minds does reflect a failure of dissemination work in the pre-conflict phase, for the humanitarian message must be conveyed before a war if there is to be any chance of getting through to the combatants' humanitarian conscience once hostilities have broken out. That is the challenge which must be taken up in times of peace and relative peace. To that end, with the indispensable aid of the States, dissemination resorts to an intercultural approach, creating a sense of responsibility in the local media and systematically raising the awareness of young people, academic circles, National Societies, and the armed forces.

## **Dissemination and cooperation in the post-conflict phase**

In the post-conflict phase, dissemination and cooperation revert to their pre-conflict aim of preventing the emergence of violence. A number of dissemination activities, moreover, can equally well be carried out

before or after a war. For example, a radio play recorded in Somalia during a phase of abating hostilities praises the values of tolerance and the promotion of a spirit of peace inspired by traditional Somalian values akin to those of humanitarian law. It would have been just as possible to broadcast a message of tolerance before the war and to promote reconciliation after the hostilities. Nevertheless, different shades of meaning do exist and it is preferable to speak of dissemination activities intended *to prevent the breakdown of the peace process*. In other words, dissemination and cooperation after the conflict must be linked to efforts to stabilize the country.

It is true that the main threats to national stability - such as the border disputes, fragile economy and precarious political situation which are all too often the lot of countries emerging from war - do not fall within the competence of the Movement. Other domains, however, particularly the social, psycho-social, and ethno-cultural, are factors which affect the return towards peace and which call for assistance from both the ICRC, the Federation, and the National Societies, whether through cooperation in development or through dissemination.

In Yemen, for example, live munitions still lie in wait around the towns which were besieged during the conflict. They represent a threat to the civil population and especially to children, who do not recognize the danger and run the risk of being maimed for life. As a partial response to this problem (the explosives are still where they were), the ICRC delegation, together with the Yemen Red Crescent Society, has organized a campaign to warn the population against the hazards and to tell children what they should do. The campaign proved to be a great success because it addressed a genuine social concern. At the same time, it was an opportunity to promote knowledge of humanitarian law and the Fundamental Principles of the Movement.

In order to maximize the preventive effect, the dissemination and cooperation options may have to be adapted to meet the more prominent social problems. In this context, the initiative taken by the Australian Red Cross, which has conducted a programme in the West Bank for the reintegration of former detainees, is particularly apposite. According to the conclusions of a recent report published after a study conducted in seven countries emerging from civil war, peace, demobilization, and reintegration are highly interdependent processes.<sup>17</sup> The reintegration of

<sup>17</sup> Report of the World Bank Seminar, *Demobilization and Reintegration Programs for Military Personnel*, Paris, 28 October 1994.

persons removed "from civilian life" by hostilities, such as soldiers, militiamen, and detainees, is a far from negligible contribution to the restoration of peace.

In this context, we must recall the fate of the children of the *intifada*. While their situation is not as extreme as that of child-soldiers, they have grown up amidst violence and prejudice. They deserve the help of a body which could, for example, organize campaigns on the subject of tolerance and acceptance of others, or arrange inter-community camps like those run in Lebanon in 1989 by UNICEF in cooperation with the National Society. Similarly, the Spanish Red Cross has devised role-playing games to promote tolerance and acceptance of others among young people.

Finally, in preparation for a return to peace and the gradual withdrawal of the ICRC, dissemination work must be reorganized to resume a systematic approach to the priority target groups. If the ICRC withdraws from an operation without having made the authorities aware of the obligations to promote humanitarian law that adherence to the Conventions entails, or without leaving behind local dissemination structures and personnel, it must consider that it has to some extent failed in its task.

## CONCLUSION

The new types of conflict now emerging have completely changed the sphere of humanitarian action: there are no contacts capable of passing messages down through the chain of command; combatants can no longer be clearly identified; parties cannot be reminded of the rules because they have never learnt them; there are no limits to be respected because the authority of the State has given way to the arbitrary rule of militia forces or terrorism.

To ensure respect for international humanitarian law, the ICRC must now more than ever diversify its previous hierarchical and reactive approach. Due account must be taken of the fact that since the advent of irregular armed bands, recruited in haste from the most disadvantaged sections of the population, violations of humanitarian law are no longer the monopoly of the regular armed forces. Moreover, to give the message a greater impact, respect for the rules of law must be "negotiated" before armed violence breaks out. For reasons inherent in the logic of war, the impact of dissemination is inversely proportional to the rise in violence.

This means that the crucial time to ensure a minimum of humane conduct is before the outbreak of hostilities, and that the capacity to

convey the humanitarian message to those who may take up arms in a conflict, i.e. the population in general and young people in particular, is absolutely essential. The means adopted to this end include the systematic dissemination of the humanitarian message to certain target groups; reference to humanitarian values deeply rooted in the local culture so as to adapt dissemination to the local context; and, finally, efforts to develop a stronger sense of responsibility in the media and to involve National Societies to a greater extent in the task of dissemination in peacetime.

Dissemination and cooperation activities undertaken before a conflict inevitably have a preventive effect by helping to avert the outbreak of conflict. Such activities after the end of hostilities likewise help to prevent any breakdown in the peace process. Some of the most recent and remarkable new ventures have been described in this article. It is encouraging to see how they have developed and spread. Their further development and widespread implementation will require the support of the States and the active participation of the Movement's components, and are indispensable if we are to meet the challenge now presented by new types of conflict. However, besides this necessity to strive even harder before and after conflicts to prevent violations of humanitarian law, given the anarchic violence and fanaticism of conflicts of group identity, it may also be advisable to make the prevention of conflicts an explicit objective of dissemination and cooperation activities in times of relative peace.

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## *FROM PREVENTION TO REHABILITATION*

# Action before, during and after the crisis

The experience of the ICRC in retrospect\*

by François Grunewald

The past of the present time is our memory  
The present of today lies with action  
The future of the present time is imagination

### I. INTRODUCTION

#### **1. The time and the action**

The international community recently realized that certain types of emergency assistance could have negative effects on the still to come development phases. In that context , a theme has been brought under the limelight: the “emergency-development continuum”, underlying the need to design the activities in time of crisis taking into account the following stages.

The hypothesis presented here tries to go a few steps further: the relationship between an emergency and development starts long before the crisis erupts and lasts long after it has ended.

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\* Article based on a study presented to the Colloquium: “Emergency — Rehabilitation — Development”. Arche de la Fraternité, Paris, 17 November 1994.

The analysis must therefore focus on four main points:

- What preventive and/or preparatory measures should be taken in times of peace?
- Emergency action: when, why and how should it be started and how should it be phased out?
- The various aspects of rehabilitation during and after the conflict.
- What should be done when peace has finally been restored and the guns fall silent (the final phase in the progression from emergency to development)?

## 2. A unique organization: the ICRC

It is doubtless useful to recall briefly the **unique** and often little known nature of the International Committee of the Red Cross (ICRC). Although it is a non-governmental organization, the ICRC has been entrusted with its mandates by the explicit authority of the 185 States party to the Geneva Conventions and of those States which have signed the Additional Protocols of 1977. Furthermore, the ICRC is part of a much broader "family", the International Red Cross and Red Crescent Movement, which is composed of the ICRC, the National Red Cross and Red Crescent Societies, and their Federation. Of the members of this family, the ICRC plays a special role in the event of conflict. This international Movement is governed by a clear and specific ethical code based on the set of **Fundamental Principles** it has adopted, the most important of which are humanity, neutrality, impartiality, independence and universality. For 150 years, the ICRC's *raison d'être* has been the protection of war victims, and relief work is one facet of this task.

## 3. Societies disrupted by conflict

The wars waged in today's world seek to undermine established structures and values, often attained through arduous endeavour. A few air raids or artillery attacks, a rumble of tanks, an exchange of gunfire or knifings, and nothing is left but rack and ruin. Until the mid-1980s, things were fairly simple: there were the soldiers, and there were civilians. Since then the rules seem to have disappeared. All kill and are killed without distinction. We seem to have reverted to the old style of warfare that prevailed before the coming of the nation state: one human being kills another simply because he is different; and the goal is destruction not

victory. Conflicts arising from political and ethnic differences, with clanish and mafia-like overtones, are starting to outnumber those waged on ideological and geopolitical grounds. Societies have become "war prone". What action can be taken in the light of these new circumstances?

## II. PREVENTIVE AND PREPARATORY ACTION BEFORE DISASTERS ARISE

### 1. Preventing the crisis: The risks of ill-conceived development

Both in the North and in the South and in the East, ailing economies are one of the main factors heightening the risk of confrontation, for they undermine the respective country's capacity for disaster prevention and disaster response. With very few exceptions, the situation has worsened nearly everywhere: the standard of living has declined, plunging ever larger segments of the population below the poverty line; demographic growth, which increases the pressure on the environment, causes conditions of production in rural areas to deteriorate still further and speeds up (often uncontrolled or virtually uncontrolled) urbanization, heightens pressure on increasingly fragile ecosystems, aggravates friction between farmers and nomads and exacerbates the risk of ethnic and political strife.

Under the influence of the World Bank, structural adjustment programmes are streamlining administrative systems. Though necessary, this process unfortunately does not go hand in hand with improved public services, on the contrary. The first cutbacks are made in social welfare, health and educational facilities ... and also disaster prevention and preparedness! What comes next? Growing poverty is conducive to crime and breeds insecurity, violence and all forms of hatred. This hatred is then channelled into ultra-nationalistic, fanatical, tribal and fundamentalist movements, triggering a vicious circle of revolt and repression. The small-scale geostrategic clashes that accompanied the Cold War have been succeeded by a multiplicity of conflicts resulting from ill-conceived development. All too often, the only response to this worldwide crisis is to provide "emergency ward" treatment in the form of maize as food aid and increasingly explosive combinations of "military-political-humanitarian" diplomacy.

Under these circumstances, National Red Cross and Red Crescent Societies in many countries are trying to support certain vital services by engaging in development activities, organizing community help for the disadvantaged, setting up blood banks, AIDS prevention campaigns, youth group activities, etc., and thereby helping to promote positive socio-economic development.

## 2. Certain development strategies increase vulnerability

Certain factors inevitably reduce the available per capita resources (whether they are renewable or not). One such factor is demographic growth, which creates disparities and heightens the risk of conflict. Some development policies unfortunately have similar results and, moreover, weaken the whole system, leaving it unable to cope with crises. The ICRC has observed the often disastrous effects of such policies in the course of many conflicts and crises, as illustrated by the following examples.

- *Development strategies which increase farmers' vulnerability in terms of food*

1980, Upper Casamance (Senegal): Drought had struck again. The Mandingo farmers had hardly any food stocks left. They had adopted the "all cotton extension programme" advocated by the cotton company on over 70% of their land. In the same region the Toucouleur minority, who had become settled only a short time before, had been far less receptive to the enticements of the "grow cotton" campaign. They had agreed to plant a small amount of cotton, but their staple crops came first. As a result, their stores were still half full! If the current crisis in Lower Casamance were to spread to Tambacounda, the majority groups would find themselves short of food, while the ethnic minority would experience no immediate need. What consequences could such an imbalance have?

- *Forced development campaigns with catastrophic results*

Nampula (Mozambique), early 1992/1993: The economic reforms which followed the signing of the peace accord opened the way for ever greater liberalism. Powerful trading companies reverted to methods used during colonial times: forcible planting of large areas with cash crops (more cotton), bans on felling cashew trees (cashew nuts), virtually compulsory limits on the cultivation of staple crops (cereals or legumes). The only feasible crop left was cassava with its long productive cycle

(8-12 months), its ability to grow in the shade of fruit trees and its low nutritional value. In such conditions, this policy led to malnutrition, kwashiorkor and disinvestment in a rural economy already reeling from a decade of civil war, and continues to do so. How will this situation affect the stability of a country just emerging from civil war.

- *Ecologically disastrous development policies*

The case of the trans-Amazonian highways and the agricultural concessions bordering them are well known. One of the earth's "green lungs" has been consigned to the huge land owners' bulldozers and cattle herds while the indigenous peoples, the Indians, are being mown down by private militias. One day, these Indians or their offspring, if any of them survive, may themselves take up machetes or kalashnikovs, the modern equivalent of the traditional blowpipes and poison arrows.

- *Development options resulting in extreme economic dependence*

The vast cotton fields in certain countries of the former Soviet Union give rise to several questions. The first relates to the environmental cost of such production units (the drying up of the Aral Sea, the spraying of often very toxic products from the air, etc.). The second challenges the viability of such set-ups once the centralized, planned economy which typified the Soviet Union has disappeared. Production takes place in one area, processing in a second, food supplies come from a third. What happens when a political rift or, worse yet, a front line cuts the cotton-producing region off from its markets and its sources of food?

### 3. Action during peacetime to change behaviour

In these high-risk situations, humanitarian reflexes must be created which will come into play whenever a crisis breaks out. The ICRC, in conjunction with the other components of the Red Cross and Red Crescent Movement, strives to remind the various groups involved (be they regular armed forces or guerrilla groups) of their duties and responsibilities as codified in international humanitarian law (Geneva Conventions of 1949, Additional Protocols of 1977). A host of experts, equipped with an entire range of texts and instructional materials, have been deployed on the four continents currently affected by crises and hold courses for thousands of men-at-arms every year. This activity, known as "**Dissemination**", is essential, for it is our only means of trying to prevent the irreparable from

occurring. Indeed, every possible step must be taken to prevent those acts and atrocities from being committed in times of war that would ruin any attempt at reconciliation and sabotage any effort to negotiate. The memories lingering from the hours of war may sometimes determine whether or not peace can be successfully restored.

To what avail is such work? After seeing what took place in Rwanda, Liberia or the former Yugoslavia, that is a valid question. Yet on each occasion, in the midst of horror, a few small glimmers of humanity have shown us that our efforts were not all in vain. Delegates and ambulances were able to cross front lines, the wounded were no longer summarily executed, prisoners received visits and had their names recorded, ill-treatment ceased in prisons, food was delivered in the middle of a combat zone — small gestures brought **light into the darkness**.

#### **4. Providing training to cope with crises**

One of the liveliest debates today in the development forum is focused on grassroots participation at every stage of the development process, from identification to evaluation and naturally implementation. In terms of emergency action, this same approach has been much slower. How often have teams with their white uniforms and stethoscopes descended upon astonished villages and attempted to go about their work while ignoring the human and social resources already on hand? To reverse this trend, we must first decide to train men and women among the civilian population to cope with disasters. In cooperation with a number of National Societies and their Federation, the ICRC has developed a comprehensive strategy to train aid workers and emergency personnel. But much still remains to be done.

Other leading organizations are also working in the field of disaster prevention and forecasting. The activities of international institutions such as the Asian Centre for Disaster Preparedness, UNDRO and the Department of Humanitarian Affairs (DHA) working in connection with the United Nations Decade for the Prevention of Natural Disasters should be stepped up. NGOs, both in the North and in the South, have a crucial role to play in this race against the clock to stop the deadly spread of crises.

The International Red Cross and Red Crescent Movement must in any case continue to concentrate on damage control by training men and women in disaster prevention and management, whether natural disasters

(which are the Federation's domain) or conflict-related (the ICRC's sphere of action).

## 5. For an operational information policy on potential crises

One of the key elements in disaster prevention and efficient intervention (preparation of the necessary means and staff) is the information available about "high-risk" situations. **How many mistakes have been made for the simple reason that the people concerned "did not know".**

General and specialized maps, reports, lists of stocks and ethno-sociological data should be readily available for the emergency teams. By setting up these data banks during development programmes, any necessary emergency action (which must be linked to subsequent rehabilitation) would be considerably improved. There are virtually no situations in the world today about which nothing has been written. The problem is finding this information when one has to leave in haste for an unfamiliar country with a different culture and climate. Much preparation has yet to be done to give easy access to this information, a task which fortunately is facilitated by the progress in communications and information technology (INTERNET system, etc.).

## 6. Prompt detection of crises: Early Warning Systems (EWS)

Those who have been fortunate enough to be involved in setting up and monitoring early warning systems are aware of their obvious benefits, but they also know their limitations. There are at present several systems operating at different levels. The global system adopted by the Food and Agriculture Organization (FAO) covers the entire world. The Famine Early Warning System (FEWS) of the United States Agency for International Development (USAID) operates on a regional scale. Others have a country-wide or sometimes only a local range. Some of these systems use data mainly provided by satellites, while others take in only climatological and agronomical data. The most effective ones are probably those based on a combination of specialized fields including the social sciences, in particular price curve analysis and economic phenomena such as abnormal sales of livestock or other exceptional activities. Some focus

on one subject, especially those designed for the anti-locust (acridian) campaign. If properly operated, the large-scale FEWS or FAO system or the anti-locust networks are extremely useful in charting overall trends and signalling a shift to orange and/or red alert.

These systems, however, are rarely operational at the very local level and are often hindered by a lack of local parameters. Only specifically-designed studies can produce the database indispensable for the setting up of effective early warning systems. Furthermore, there must be adequate means available to launch such studies, the appropriate methods to put them into effect and the capacity to make use of them. A few NGOs have attempted to do so, but their efforts have yet to be evaluated.

It is relatively costly to set up and operate these national or local early warning systems, and they do not "pay off" immediately. Only a disaster can show whether the EWS has worked well by providing a timely warning which enabled effective action to be taken so that worse consequences were avoided. Such smaller-scale early warning systems are truly a field to which development planners and donors should devote greater attention.

Besides having regular access to the above-mentioned major early warning systems, the ICRC has its own EWS. It consists of a network of regional delegations, one of whose tasks is to keep up a constant watch for incipient crises throughout the world, and is based on constantly checking which vulnerable areas (fragile economies and precarious food supplies) coincide with high-risk areas (geopolitical factors, internecine friction).

## 7. Rapid response: strategies to build up emergency reserves

Early warning systems are worthwhile only if the "early warning" actually gives rise to a "rapid response".

Food aid can be provided in several ways, ranging from imports in the course of major relief operations launched by the World Food Programme, the European Union or USAID to the transfer of buffer stocks set up by regional bodies (Club of the Sahel, Southern African Development Coordination Conference, etc.) in combination with/or by means of counterpart funding. For the time being, the establishment of regional buffer stocks is hindered by both technical (perishable foodstuffs, inad-

equate storage conditions) and economic problems. Storage costs are indeed high, as illustrated by the European Community's difficulties with its own surpluses.

The availability of food aid is unfortunately still largely determined by political contingencies. Timely warnings have been given of countless incipient disasters, yet a tardy response came only when public opinion was stirred to action by the appalling scenes shown on television: Ethiopia in 1983-1984; Somalia in 1992, etc. In some forgotten conflicts, when political considerations or lack of interest outweighed the right to emergency food aid, there was simply no response at all.

### III. WHAT ACTION IS MOST NEEDED IN THE MIDST OF HORROR?

#### 1. The spectre of famine

In ever larger areas, economic progress is being reversed by tensions and conflict. War destroys the infrastructure, disrupts services, cuts off markets from their suppliers. Worse yet, crops are sometimes burnt or looted by men-at-arms or great numbers of people displaced by conflicts. The fields may not even have been tilled or sown if the area was too unsafe or military action resumed in the area during the usual farming season. Seed reserves have been destroyed or used as food in a last effort to ward off starvation. Herds have been slaughtered, die in epidemics or are cut off from their traditional grazing lands. Food from traditional alternative sources is no longer available. The slightest climatic setback then signals the end. In extreme cases, it results in famine and long columns of rural inhabitants trudging towards towns, refugee camps or food distribution sites.

The conventional, and often indispensable, response to nutritional problems is food aid paired with medical assistance. In the last 15 years, the ICRC has assembled millions of tonnes of foodstuffs and distributed them to millions of war victims: such were the large-scale operations on the Khmer-Thai border from 1979/1981; those in Ethiopia in 1985/1986; in Angola and the Sudan in 1986/1991 and again in 1993/1994; in Somalia in 1991/1993; in Mozambique in 1992/1993, in Rwanda from 1992 to 1994; not forgetting the former Yugoslavia, Liberia, the Caucasus, etc.

Food aid, however, has its limits and itself carries certain dangers also often observed by the ICRC in the field. Among the detrimental effects of food aid the following should be noted:

- the emergence of a chronic dependence on aid whenever there are large-scale and long-lasting food distributions;
- the tendency of the population to incorporate food aid, and free assistance in general, in their strategies for survival. This often leads to a drain on emergency food reserves. The farmers become used to receiving aid to offset the vagaries of climate and other crisis factors;
- the lowering of incentives to resume agricultural production owing to the fall in commodity prices induced by the massive arrival of free foodstuffs.

Programmes must be set up which enable victims to stay alive today and to survive tomorrow. The ICRC has developed a special tool to assess the needs and most suitable means of achieving this: **pluridisciplinary teams composed of nurses, nutritionists, agronomists, sanitary engineers, logistics experts and delegates specialized in several fields**. The specific role of the latter is to analyse the problems involved in the protection of certain categories of victims who are of particular concern to the ICRC: prisoners of war, security detainees, etc.

The approach adopted by ICRC nutritionists and agronomists is based on a simple premise: malnutrition results from lack of access to food. To wait until malnutrition can be detected by the classic anthropometric indicators (weight/height, weight/age, etc.) generally means arriving too late. At one point, and particularly when help is slow in coming, the only option left is to set up a large-scale operation entailing generalized distributions and special centres for supplementary and therapeutic feeding. Food programmes, though useful and necessary, provide only unsatisfactory solutions to food crises.

## **2. Emergency rehabilitation in times of war: A glimmer of hope**

Action plans resulting from surveys by multidisciplinary teams of agronomists and nutritionists and put into effect at the height of the emergency, alongside the provision of food aid, will lay the foundations for rehabilitation. In some programmes, by enabling farmers to stay on their land, food aid becomes an integral part of the rehabilitation policy.

The ICRC will try to detect as early as possible the potential food supply problems even in the midst of battle. It must then attempt to tackle the causes of a foreseeable famine and help people start up production again despite security constraints. Relief strategy is often based on the provision of coordinated food aid ("stay alive today") combined with support in resuming production ("survive tomorrow"). Experience in Somalia, the Sudan, Mozambique, Angola, Rwanda, Liberia and Yugoslavia has shown us just how effective this approach is.

The same reasoning also applies in other areas. By repairing the water conduits of encircled towns, sinking wells in areas where water sources have been destroyed by passing tanks and sending medicines to public health facilities cut off by battle lines, some hope can be restored even before the gunfire has ceased. Without this aid, the population would have no alternative but to flee or die.

#### IV. MAKING THE WASTELANDS OF WAR GROW GREEN AGAIN: AIMS AND METHODS OF REHABILITATION

##### 1. Philosophy of emergency rehabilitation

The twofold approach of "food aid/emergency agricultural rehabilitation" can have a preventive effect or at least limit the damage. The aims of emergency agricultural rehabilitation are:

- to prevent or limit damage (this is the "care and maintenance" principle, applied not to individuals but to the productive capacity of rural societies);
- to hasten the return to productive capacity after a period of rapid disinvestment in rural economies hard hit by war;
- to help restore reliable food supply networks, particularly by facilitating the renewal of food reserves and of emergency seed banks;
- to restore producers' dignity, which may have suffered during the often long and humiliating wait at food distribution sites.

Since conflicts are tending to drag on more and more, the concept of "conflict-related emergency" is being or should be replaced by a different notion: support for the survival strategies of people enduring prolonged wars. The decades of clashes in Angola and the Sudan and the years of destruction and economic paralysis in the former Yugoslavia demand more than food aid or even mere seed distribution. How, for example, can the food derived from animal husbandry be replaced in an agro-pastoral society that has lost all its livestock? There is still much to be thought up, experimented with or tested in actual conditions.

## 2. A key concept: support for survival strategies

Most societies have developed in conditions that were precarious in every respect. Unfavourable weather conditions, haphazard food supplies, unstable relationships with other communities, etc. Ingenious mechanisms have had to be devised to reduce risks and manage crises. Societies and groups which failed to do so have perished. The ICRC's task is to bolster such mechanisms either during or at the end of the crisis. The few examples given below will illustrate this point.

### The Sudan

In the rigorous conditions of the White Nile basin, the survival strategies of the Dinka and Nuer peoples are based on five traditional activities: animal husbandry, agriculture, gathering, fishing, and trading; food aid must now be added to this list. These coping mechanisms in an inhospitable environment require comprehensive management of vast sparsely inhabited areas. The large concentrations of people at the food distribution points mean that people are sometimes cut off for long periods of time from their own lands and sources of food and their vulnerability is increased. As early as 1988, the ICRC decided to reinforce the productive capacities of the southern Sudanese people by launching a large-scale veterinary programme. This strategy, renewed in 1993, has proved very worthwhile.

### Somalia

The war has had a particular effect on the food supply of this country, with its very diversified agro-ecological systems ranging from purely nomadic herding to essentially agrarian systems and including multiple

combinations of agriculture, animal husbandry and fishing. From the outset of the conflict, the ICRC has approached the problem by recognizing this diversity. In grazing areas, it has taken measures to protect surviving herds from the major endemic diseases and boost their productivity; in the less arid south, it has distributed seed and farming implements. Finally, along the coast and rivers, the ICRC has supplied fishing villages with hooks and lines.

### Mozambique

In Mozambique, we discovered the local people's lore of edible wild plants. These plants are the key to their survival in hard times but they are not inexhaustible. They too must have the chance to grow again. Food and agricultural assistance save these forest products from depletion by over-use. They are thus conserved during the season when the areas concerned are easily accessible and remain available for use during the rainy season or if the conflict flares up anew, making aid deliveries problematic again.

### Eastern Europe

While the ICRC now has considerable experience in supporting survival strategies in tropical areas, there is still much to be learnt about conflict situations in "developed" countries. Nevertheless, over the past two years, the ICRC has gained a certain expertise in the former Yugoslavia and in the countries of the former Soviet Union where lifestyles and production methods often closely resemble our own. Programmes have been set up to assist agriculture but also to stimulate production units. In this specific instance, experience has shown that it is essential for the ICRC to continue to be perceived as neutral by all the parties concerned.

### Conclusion

The key to the success of emergency agricultural rehabilitation programmes is dictated by their specific nature. Since they are set up under crisis conditions, they can seldom benefit by the classic support systems for agricultural extension campaigns that give ongoing advice on their implementation and familiarize the population with the methods used. From the very beginning, these programmes must therefore make use of

local know-how and traditional practices, adopting varied strategies to take local diversity into adequate account. In order to follow closely these peasant farmers' traditional strategies, with their geographical differences and adaptability to the unpredictable, a soundly based analysis of them is needed. Emergency workers and development experts should meet and share views on the appropriate methods for such an analysis.

## V. RISING FROM THE ASHES: POST-DISASTER DEVELOPMENT

### 1. Past crises and future weaknesses

The link that exists between poverty, war and vulnerability is already well known. Everyone is not equal in the face of adversity, and crises further accentuate the disparities. It is very likely that we will again see the ravages of growing inequality, of rampant poverty and the unchecked extraction of mineral resources, further devastating a natural environment already deeply scarred by conflict and its consequences (for instance, huge numbers of displaced people have totally deforested south-west Rwanda and the Goma region in Zaire).

The aftermath of crises is a time of incredible social creativity, redistributing the cards in ways that would previously have been unthinkable. However, these exceptionally promising moments may also simply result in chaos, crime, waste and the perpetration of gross injustice — all conditions conducive to a renewed crisis. Those who wish to help these devastated areas and their traumatized peoples to get back on their feet must demonstrate unwavering vigilance and generosity.

That same period is also a crucial one for the International Red Cross and Red Crescent Movement: it is a time to forge a spirit of and capacity for humanitarian action within a community whose wounds are still open; a time to forget hate while remembering the beneficial work of Red Cross volunteers during the conflict; to rebuild a world in which the phrase "mutual aid" has a meaning, bringing to mind those who hastened beneath heavy fire to rescue the wounded from either side; a time to restore village communities and instil a spirit of solidarity by participation in projects such as those undertaken by the ICRC in the darkest hours.

## 2. For “emergency” personnel, planning the withdrawal and training others to take over

A number of leading organizations, like OXFAM, have both specialized emergency departments and other departments engaged in long-term action. If funds do not dry up when the crisis ends and media attention shifts elsewhere, these institutions can make a smooth transition from the “emergency” phase to rehabilitation and development activities.

The ICRC’s mandate is restrictive since it applies essentially to the period of conflict. Fortunately, many conflicts have a “happy” ending, namely peace, which usually leads to a withdrawal of the “emergency” personnel. Partners must then be found to take over the emergency rehabilitation activities and transform them into development projects with their specific methods and objectives.

There are several possible scenarios:

- *The situation favoured by the ICRC:* the country’s own National Society decides to take over these activities (either alone or with the help of the Federation). In this way it has been possible to adapt programmes started during the war — medical and social work, dissemination of international humanitarian law, tracing of families separated by the conflict, etc. — to development needs and ensure that they were continued.
- *A rare situation:* the national ministries decide to take over and run the programmes themselves. Since peace has returned, the ministries and their provincial representatives theoretically can travel throughout the country (which was not always possible during the conflict and had led the ICRC to assume the role of a neutral and independent intermediary).
- *The most common situation:* an NGO or occasionally a United Nations agency is interested in taking over a programme or a specific region.

Replacing the ICRC by another organization often proves difficult, for mutual trust must be established between that organization and the people before it can step in. And things do not necessarily go smoothly simply because the ICRC has been able to donate equipment for the initial months of the NGO’s operation. Experience has therefore led us to adopt the idea of a transitional “induction” period during which the National Society or NGO concerned works for a time under the guidance of the ICRC in order to get to know the situation and meet its partners. This approach

has been successfully tried out in Somalia and Mozambique and the ICRC intends to continue it.

The National Red Cross and Red Crescent Societies are often the only quasi non-governmental bodies in civil society, in the absence of a true network of non governmental organizations, which is usually non-existent or in its infancy. Their role is all the more essential in the post-conflict period. In view of the challenges, but also of the limited absorption capacity of most of the National Societies, one could see the importance of a dynamic policy to develop these other components of the Movement. This should take place during peace time, and it is there that the role of the International Federation of Red Cross and Red Crescent Societies has a crucial role. Strategies to develop National Societies in the middle of the conflicts have still to be further elaborated. The ICRC, alongside with the other components of the Movement, should pursue its efforts in that direction.

## VI. LOOKING AHEAD: A WORLD AT RISK

### 1. A comprehensive strategic approach must be found

It is often depressing to glance at the newspaper or watch the TV news every day. It is becoming more and more evident on this crisis-stricken planet of ours that there is a space-time continuum, starting well before the crisis breaks and lasting long after it is over. We are beginning to recognize clearly the determining factors that make it better or worse. We also have become very familiar with the catalysts of peace and the sources of conflict and know how hard it is to build peace on the ruins and hatred left by war.

The diagnostic means devised by development specialists, the insight gained into the varying forms and degrees of vulnerability resulting from emergency operations, and the peaceful tool of international humanitarian law can and must be used.

To sum up, the "emergency-development" continuum can be represented as follows, juxtaposing the working methods of institutions such as the United Nations Organization or NGOs and those of the ICRC.

## THE "EMERGENCY-DEVELOPMENT" CONTINUUM

	Phase	Activities within a more general framework (UN, NGOs)	Activities of the components of the Movement
1	Development	Programmes for socio-economic development Disaster prevention — Disaster preparedness (analysis of factors rendering systems vulnerable, preparation of databases, creation of buffer stocks) Installation of early warning systems	Disseminate knowledge of IHL (in advance, in times of peace) Identify databases and prepare data summaries Develop the capacity of National Red Cross and Red Crescent Societies to conduct these activities Prepare for emergencies (training, set up logistic infrastructures, etc.) Analyse risk factors, monitor situations via the network of regional delegations.
2	Early warning	Certain indicators show red alert	Sound the warning: send an evaluation team
3	Emergency	Assess the situation Prepare UN Consolidated Appeals Mobilize resources Start emergency operations	Start preventive action, emergency programmes and emergency rehabilitation Disseminate knowledge of IHL (with greater immediacy, in the heat of battle) Mobilize resources
4	Rehabilitation	Mobilize resources Set up rehabilitation activities	Start rehabilitation Seek partners to take over programmes and transform them into "development activities".
5	Development	Resume development and reconstruction projects	Programmes taken over either by a National Society with help from the Federation or by an NGO and attention gradually transferred to development problems.

## 2. The big challenges

The ICRC has at its disposal an entire range of skills, information and impressive relay systems whose potential is doubtless not yet fully utilized. Many of the subjects raised above should be developed in greater detail, from both the theoretical and the operational points of view. There are several areas that merit joint reflection and action.

### (a) The time factor

Farmers in France often say: "*il faut se faire un allié du temps*" (you must make an ally of time/weather). The dual meaning of the word "*temps*" is used to say that the weather determines the time when they can or must do their work, and that both weather and time must be put to the best possible use. A large part of the "emergency and development" issue is linked to the question of time. The contrast between "doing things fast and well" or "doing things fast OR doing them well" is one such question. "Doing things in time", and therefore "being forewarned and forearmed/prepared" is another. Lastly, there is the question of the "durability" once the emergency is over, or what is termed in English the "sustainability", of activities begun during the emergency period.

### (b) Use of local human resources

There is now a growing realization of the fact that, even in emergencies, nothing can really be achieved without the consent or participation of the population concerned. To send in emergency teams without relying on the local people and their skills often results, at best, in rather a mess and at worst in disastrous mistakes. It is often on this point that the "emergency" approach diverges most widely from the "development" approach. Yet a crucial link between emergencies and subsequent development can be found in improved human resource management and recourse to traditional knowledge and local skills. The strength of the ICRC in conflict situations lies in its clear-cut mandate and the network of National Red Cross and Red Crescent Societies upon which it can call.

### (c) Investing in the collection of information

Improved knowledge means superior planning, earlier warning and more effective action. Much work remains to be done in the collection, processing, and summarizing of the necessary information on the hot spots (past, present and future) around the globe. For example, all the urban

problems with humanitarian implications in the mammoth cities in the South are uncharted territory to us.

**(d) A four-fold approach: presence/dissemination/protection/assistance**

While the link between assistance and protection is now fully recognized, the complete formula for the aforesaid possible approach — both as a whole and its application over time, i.e. before, during and after the crises — is less clearly understood.

That is perhaps one of the challenges for the years to come, for the ICRC in particular, and for the International Red Cross and Red Crescent Movement in general.

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# The 125th anniversary of the International Review of the Red Cross

## A FAITHFUL RECORD\*

### II. VICTORIES OF THE LAW

by Jacques Meurant

From a strictly legal standpoint a veritable law of humanity has been created, whereby the integrity and dignity of the individual are protected in the name of a moral principle that transcends the boundaries of national law or politics.

Max Huber

*Le droit des gens et l'humanité*<sup>1</sup>

### 1. Law, time and morality

The first issue of the *Bulletin international des Sociétés de secours aux militaires blessés* (October 1969) contains an appeal by the International Committee for ratification of the Articles of 1868 additional to the 1864 Geneva Convention. It is addressed to the Central Committees of the Relief Societies, with the request that they approach their respective governments on the matter.<sup>2</sup> By the same token, the Committee proposed

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\* Part I of this article, "Protection and Assistance", appeared in the *International Review of the Red Cross (IRRC)*, No. 303, November-December 1994, pp. 532-541.

<sup>1</sup> *Revue internationale de la Croix-Rouge (RICR)*, No. 404, August 1952, pp. 646-669, at p. 666.

<sup>2</sup> "Ratification des articles additionnels à la Convention de Genève", pp. 6-7.

as recommended reading the work by Gustave Moynier, *Etude sur la Convention de Genève*,<sup>3</sup> which was described as a guide for use by army officers and doctors to give them a better understanding of the provisions of the 1864 Convention, "to refute the objections of its detractors and, by demonstrating that this instrument represents a victory for civilization, to turn them into zealous supporters".<sup>4</sup> In the second issue of the *Bulletin* (January 1870), the Committee asked the Central Committees to what extent States had promulgated penal or other legislation and military ordinances or regulations relating to the stipulations of the Geneva Convention or action by relief societies.<sup>5</sup>

One hundred and twenty-five years later, the *Review* still reflects the same matters of concern to the ICRC. It still makes exactly the same type of appeal and reports on similar action, in order to ensure that what we now refer to as "international humanitarian law applicable in armed conflicts" still lives and breathes, and that it is understood and disseminated and hence increasingly observed.<sup>6</sup> Indeed, ever since its creation the *Review* has been telling the story of the never-ending quest for what Gustave Moynier referred to as "the gradual mellowing of the law of war".<sup>7</sup> It is a story about the wide range of initiatives taken by the ICRC in accordance with its mandate,<sup>8</sup> about a wealth of research, studies, and representations made to governments, and about numerous expert consultations both within the International Red Cross and Red Crescent Movement and outside it. It is a long litany of proposals that have been accepted and then amended, of projects that have been aborted and then reinstated, and of concessions made at innumerable conferences and preparatory meetings.

<sup>3</sup> Gustave Moynier, *Etude sur la Convention de Genève*, Librairie Joël Cherbuliez, Paris, 1870, 376 pp.

<sup>4</sup> *Ibid.*, p. 10.

<sup>5</sup> "Questions adressées aux Comités centraux", pp. 62-64.

<sup>6</sup> Over time, the *Review* has gradually specialized in humanitarian law, and is probably the only multilingual, international journal to deal with this body of law on a regular basis. However, it is encouraging to note that in recent years National Societies and academic institutions have launched international reviews on humanitarian law, sometimes jointly. Furthermore, an increasing number of international and national reviews on public international law are giving wider coverage to humanitarian law and humanitarian activities.

<sup>7</sup> Gustave Moynier, *op. cit.*, p. 19.

<sup>8</sup> See Article 5, paras. 2 and 3, of the Statutes of the International Red Cross and Red Crescent Movement, and Article 4, paras. 1 and 2, of the Statutes of the ICRC (of 20 January 1988). Furthermore, Article 3 of the ICRC Statutes of 10 March 1921 had already stipulated that the goal of the ICRC was to coordinate efforts to relieve the victims of war, sickness and civil disaster.

Readers interested in tracing the evolution of humanitarian law through the *Review* will notice at once that, as with other branches of international law, humanitarian law is remarkable for its complex relationship with time, not as an abstract phenomenon but as a gauge of human attitudes and convictions. With time, *de facto* situations acquire the force of law; this is how custom and written law came about, with the law constantly striving to keep pace with the facts.

As Jean Pictet observed in 1966, "the law is always lagging behind the logical and moral interpretation of social facts. It therefore tends to complete and improve itself the better to comply with what is required of it".<sup>9</sup> As regards humanitarian law, an extraordinary law which applies in extraordinary situations, the struggle to keep up with events takes on tragic proportions, for the stakes are none other than protection of the individual and respect for his or her dignity in situations of armed conflict. In truth, political and military considerations have always posed a challenge for the law, and to a certain degree have forced it to adapt and evolve. It is a well-known fact that the 1929 Geneva Convention relative to the Treatment of Prisoners of War resulted directly from the dreadful experiences of the war of 1914-1918. And the 1949 Geneva Convention Relative to the Protection of Civilian Persons in Time of War resulted from the boundless suffering endured by millions of civilians during the Second World War.

The ultimate goal of humanitarian law, which engages the responsibility of the State, is to protect the individual. Here again, it took decades for humanitarian law to succeed in giving the individual primacy over State sovereignty. And it was 85 years before the protection afforded to wounded and sick combatants and medical personnel by the 1864 Geneva Convention was extended by the Fourth Geneva Convention of 1949 to the civilian population. But the adoption of Article 3 common to the Geneva Conventions must be seen as major breakthrough. In the words of Max Huber, this "humanitarian iron ration"<sup>10</sup> at all times affords minimum guarantees to individuals, even vis-à-vis the authorities of their own countries of origin.

The originality of humanitarian law lies in the fact that it bridges two different types of concept — one judicial, the other moral. In addition to

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<sup>9</sup> Jean Pictet, "The principles of international humanitarian law". *IRRC*, No. 66, September 1966, p. 462.

<sup>10</sup> Max Huber, "Le droit des gens et l'humanité", *op. cit.*, p. 666.

striking a compromise between military imperatives and humanitarian obligations, humanitarian law has a very special moral dimension in that it preserves a measure of humanity in the heart of violence. This is exactly what Henry Dunant and the other founders of the Red Cross were calling for. As former ICRC member Edmond Boissier wrote: "Greatest credit goes to the founders of the Red Cross for having introduced into relations between all States in the event of war the recognition of a moral principle, and for having incorporated this principle in international law and in practice by means of a universally respected and generally observed convention."<sup>11</sup>

Gustave Moynier<sup>12</sup> was the father of a long line of ICRC jurists and thinkers who over the years have built up the present sound structure of humanitarian law. The *Review* has been privileged to record their reflections and their initiatives. Members or staff of the ICRC, they have journeyed through the past 125 years with the fervour of pioneers. Like master craftsmen, they did and still do take pride in a job well done. They had and still have the strength to see their job through to the end, and the capacity to adapt constantly to the times. They have also understood that law is not made in diplomatic circles or universities alone, but is enriched by the experience of practitioners in touch with reality, delegates out in the field or members of National Red Cross and Red Crescent Societies.

Their contribution to the development of the law and their efforts to introduce a measure of morality into conflicts must be duly recognized.



The period 1969-1994 is particularly noteworthy since during those 25 years great progress was made in the field of humanitarian law. The years 1969 to 1977 were a time of intense preparation and negotiation which culminated, with the adoption on 8 June 1977 of the Protocols additional to the Geneva Conventions, in the reaffirmation and development of humanitarian law applicable in armed conflicts.

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<sup>11</sup> Edmond Boissier, "Morale internationale et Croix-Rouge", *RICR*, No. 249, May 1923, p. 449.

<sup>12</sup> Gustave Moynier was President of the International Committee from 1864 to 1910. He was also the *Bulletin's* first editor, a position he held until 1898.

The following year saw the start of a fresh era, in which the new law was actively promoted and disseminated and efforts were made to explain and interpret the new provisions. That era continues to the present day, but in the late 1980s the problems caused by an upsurge in all forms of violence and in breaches of the law made it imperative to take measures to uphold the existing law and to make certain innovations.

This was the conclusion reached by the International Conference for the Protection of War Victims held in Geneva from 30 August to 1 September 1993. The Conference marked the start of a new phase that is primarily focused on a more rigorous application of humanitarian law.

At each successive stage, the *Review* has kept a record of developments in the law, while at the same time helping to clarify, explain and spread knowledge of its provisions.

## 2. Reaffirming and developing the law

By the end of the 1960s the Movement's components and the United Nations alike were facing a plethora of conflicts, many of them internal, and new types of players, such as national liberation movements. In particular, they were faced with horrendous suffering among the civilian population as indiscriminate bombing and new lethal weapons claimed increasing numbers of victims. They thus became aware of the need not only to reaffirm the existing humanitarian rules relating to armed conflicts, but also to adapt the law to these new situations.

To mention but a few points, the law of The Hague — which had been neglected for some 50 years — and the law of Geneva could certainly no longer be dissociated. The bombing of the city of Dresden made a deep impression on the collective memory, and the recent ceremonies marking its fiftieth anniversary serve as an opportune reminder that 24 million civilians died in the Second World War, one and a half million of them in air raids. As Jean Pictet pointed out, "It is realized now, somewhat late, that the massive bombardments of cities did not pay from the military standpoint. Such bombardments were not justified morally, legally, or even from a practical point of view"<sup>13</sup>.

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<sup>13</sup> Jean Pictet, "The need to restore the laws and customs relating to armed conflicts", *IRRC*, No. 102, September 1969, pp. 459-483, at p. 478.

Furthermore, the limits imposed on ICRC activities in a number of conflicts during the 1960s threatened to jeopardize the organization's credibility. States parties to the Geneva Conventions contested the applicability of all or part of their provisions and refused to grant the ICRC access to prisoners, so that the organization was unable fully to discharge its functions.<sup>14</sup>

Mindful of its mandate and the duties entrusted to it by International Conferences of the Red Cross in regard to developing the law, in 1957 the ICRC began preparing a set of rules intended to limit the effects of hostilities on the civilian population and to protect it from indiscriminate attacks.

The draft rules were submitted to the 19th International Conference of the Red Cross in New Delhi in 1957. The extremely detailed text, which included a ban on atomic, bacteriological and chemical weapons, was attacked from all sides, particularly by States in possession of nuclear weapons.<sup>15</sup> A resolution was eventually adopted inviting the ICRC to submit the draft for consideration by governments, and it subsequently sank without trace.

The United Nations, meanwhile, had not been idle. Under political pressure from newly independent States which felt that international humanitarian law was inadequate to deal with the type of campaign they had waged to gain their independence, and as other movements pursued their own struggles in Viet Nam, Mozambique, Rhodesia and South Africa, in the late 1960s the United Nations passed a series of resolutions on respect for human rights in armed conflicts. One of these was adopted in 1968 by the International Conference on Human Rights; others were adopted in 1968, 1969 and 1970 by the General Assembly. All of them provided a stimulus for the International Red Cross.

The 21st International Conference of the Red Cross, held in Istanbul in October 1969, gave a decisive impetus to this trend in its Resolution XIII on the Reaffirmation and Development of the Laws and Customs applicable in Armed Conflicts, which underlined "the necessity and the

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<sup>14</sup> See previous article in this series (note\*), pp. 534-535.

<sup>15</sup> 19th International Conference of the Red Cross, New Delhi, October-November 1957, *Proceedings concerning Draft Rules for the limitation of the dangers incurred by the civilian population in time of war*, Geneva, April 1958 (mimeographed), 199 pp. See also IRRC, October 1956.

urgency of reaffirming and developing humanitarian rules of international law applicable in armed conflicts of all kinds, in order to strengthen the effective protection of the fundamental rights of human beings, in keeping with the Geneva Conventions of 1949". This important decision, which the ICRC had prepared well beforehand, marked a turning-point in the history of humanitarian law over the last quarter-century.

In 1971 and 1972, the ICRC convened conferences of government experts and specialists from the National Red Cross and Red Crescent Societies representing the world's principal legal and social systems. The goal was to analyse a number of issues that Max Petitpierre, former President of the Swiss Confederation, aptly summarized in the *Review*: "The new treaty law should in particular provide civilian populations with protection against indiscriminate warfare, should prohibit certain weapons and safeguard the victims of wars, internal disorders and guerrilla warfare. The latter gives rise to some delicate problems. Who may legitimately carry out hostile acts, and against whom or what, is something which must still be defined. There must also be rules which belligerents must observe during hostilities, such as the safety of surrendering enemies; the treatment of parachute troops; looting; and blockade (bearing in mind the experience of the war in Nigeria). The chapter on supervision, reprisals and sanctions will be capital".<sup>16</sup>

Following these series of meetings, the ICRC was in a position to prepare two draft protocols; one relating to the protection of victims of international armed conflicts and the other to the protection of victims of non-international armed conflicts. These drafts were to serve as basic documents for the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts, which opened in Geneva on 20 February 1974. The Conference held four sessions, the last in June 1977.

Throughout this period, the *Review* not only provided detailed accounts of the preparatory meetings and the sessions of the Diplomatic Conference (see *Bibliographical notes*, pp. 305-306 below), but also endeavoured to make a contribution by publishing pertinent studies, especially on new or sensitive issues.

For example, the issue of aggression was broached at the very beginning of the Diplomatic Conference. Some States asserted that from the

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<sup>16</sup> Max Petitpierre, "A contemporary look at the International Committee of the Red Cross", *IRRC*, No. 119, February 1971, pp. 63-81.

legal and the moral standpoint it is wrong for the aggressor and the State attacked to find themselves on the same footing with regard to the laws and customs of war because acts of war committed by an aggressor State are, *ipso facto*, illegal; those who commit them deliberately put themselves outside the law and should therefore be punished.

Statements like these undermine the entire structure of humanitarian law and it took all the persuasive powers of the ICRC representatives, supported by other delegates, to convince the participants that, "while the Conventions take the form of agreements between States, they are above all a declaration of the rights of the individual vis-à-vis the arbitrary acts of the enemy; moreover, they were drawn up in the interests of individuals rather than governments".<sup>17</sup>

Another question widely discussed in the *Review* is the scope of application of Protocol I, which encompasses "armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racist régimes in the exercise of their right of self-determination...". The provisions relating to this third type of conflict, which the ICRC had categorized as non-international, were transferred to Protocol I during the first session. The issue was the subject of a lengthy and arduous debate, which caused considerable apprehension among those who feared that the law might end up distinguishing between several types of conflicts, combatants and civilian victims, with some enjoying better protection than others. Did this signify a return to the concept of a "just war", thereby threatening the outcome of the Conference?

These fears were overcome, however, and Article 1, para. 4, was finally adopted by a large majority, prompted, in fact, by quite different motives. There were those who considered that the provision was of a transitory nature and would apply merely in the very few cases where colonialism or foreign domination still existed. For others, this new category of armed conflict was of a permanent nature, and the list of such conflicts was by no means limited to those currently taking place in the world.<sup>18</sup> It is ironic that the former argument won the day, since no movement has ever referred to Article 1, para. 4, since the Protocols were adopted! On the other hand, it is regrettable that this new article caused States — and powerful ones at that — to refuse to become party to the Protocols.

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<sup>17</sup> Claude Pilloud, "The concept of international armed conflict: further outlook", *IRRC*, No. 166, January 1975, pp. 7-16, at p. 9.

<sup>18</sup> Claude Pilloud, *ibid.*, p. 13.

Another controversial issue was the status of combatants, particularly guerrilla fighters. The *Review* has published numerous legal and historical studies on guerrilla warfare since the end of the First World War. Since the 1960s, this formerly exceptional type of warfare has become the norm, yet very little progress has been made in the provisions relating to the status of guerrillas. Admittedly, Article 3 common to the Geneva Conventions prohibits the summary executions that were once the lot of captured guerrilla fighters, and *ad hoc* agreements have been reached between parties on the treatment of such prisoners. Nonetheless, there was a need for regulations such as those proposed by the ICRC in 1971 at the First Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law. "It would be advisable for [States] to convince themselves, by means of careful historical study, of the urgent need to reach a solution which may safeguard the essential rights of the human person — even if he is the worst criminal — and their overriding political needs. There can be no doubt that the humane treatment of prisoners entails considerable advantages, not only from the standpoint of reciprocity (and sometimes even without reciprocity), but also for a return to domestic and international peace".<sup>19</sup>

The lengthy discussions on this issue that began at the first session of the Conference finally resulted in a liberal provision so complex that, if truth be told, it remains open to subtle differences of interpretation to this day.

The Conference was jeopardized by a number of other thorny issues, too numerous to be described here. However, the proceedings of the meetings and the analyses published in the *Review* reveal the weighty nature of the discussions and the results of a process which may be considered a new victory for humanitarian law.

Admittedly, Protocol II relating to non-international armed conflicts was weakened, but such was the price to be paid for the support of young States of the Third World. Moreover, discussions on atomic, biological and chemical weapons were ruled out at the Conference, and here again, an ironic glance can be cast at the usefulness of the rule of consensus, which gave rise to a unity of views prompted by a wealth of ulterior motives!

Nonetheless, the gains by far outweighed the shortcomings and the Additional Protocols were invaluable in helping humanitarian law keep

<sup>19</sup> See Michel Veuthey, "Military instructions on the treatment of prisoners in guerrilla warfare", *IRRC*, No. 132, March 1972, pp. 125-137, at p. 137.

pace with contemporary reality. Consensus was reached on the essentials: protection of the civilian population against the dangers of indiscriminate warfare; prohibition of blanket or indiscriminate bombing. This fundamental achievement was accompanied by increased protection for medical personnel, equipment and transports, for civil defence activities, for the natural environment and for cultural objects.

The role of the ICRC was reaffirmed, while the High Contracting Parties and the parties to international armed conflicts pledged to facilitate action taken by National Red Cross and Red Crescent Societies and the League of Red Cross Societies in behalf of conflict victims.

Two other noteworthy points were the adaptation of the provisions limiting the right of belligerents to choose methods or means of warfare for military operations, and the efforts made to strengthen monitoring and repression mechanisms.

In 1987 ICRC President Cornelio Sommaruga declared: "Is there any room left for doubt that the protection of the individual was one of the primordial objectives of the Protocols, when the States agreed to strengthen the rights accorded to the individual and the minimum fundamental guarantees of humane treatment for all individuals in times of armed conflict, both international and internal?"<sup>20</sup>

### **3. Promoting and disseminating the law**

As soon as the Diplomatic Conference drew to a close the ICRC embarked on a campaign to persuade States to ratify the Protocols or accede to them. Senior ICRC officials and delegates set out on a tour of the world's capitals, and the National Societies were invited to make their own approaches to their respective governments.

The initial results were hardly encouraging, despite resolutions adopted by International Conferences of the Red Cross in Bucharest (1977) and Manila (1981) urging States to ratify the Protocols. By 1981, only 17 States were party to Protocol I and 16 to Protocol II. The numerous impediments to ratification stemmed from underlying political and ideological motivations. Very often, ratification was rejected on grounds of

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<sup>20</sup> Cornelio Sommaruga, "The Protocols additional to the Geneva Conventions: a quest for universality", *IRRC*, No. 258, May-June 1987, p. 245.

national sovereignty as States applied their unilateral interpretations of the law. Further, it should be borne in mind that "the decision to ratify the Protocols is also a political act in the context of international relations. Governments want to know who has already ratified the Protocols and for what reasons, just as they want to know what has prompted others to hesitate or to reject the Protocols".<sup>21</sup> A certain degree of ignorance and indifference in diplomatic circles and government departments also played a part, not to mention the complex, even esoteric, nature of the subject matter.

Yet the ICRC never tired in its efforts and little by little, as the political situation eased with the breakdown of the two major power blocs in the late 1980s, the number of ratifications and accessions increased. By 1994, fully two-thirds of the world's States were party to the Protocols and they were well on the way to universal acceptance.

On the other hand, to date only 44 States have recognized the obligatory competence of the International Fact-Finding Commission, which is responsible for monitoring respect for humanitarian law. The ICRC will have to intensify its efforts in this regard.

The humanitarian law treaties may remain a dead letter unless States take legal and practical domestic measures to guarantee their application. The ICRC has frequently made written approaches to governments and National Societies encouraging such action. The *Review* regularly publishes information on legislation and rules of application that States have adopted for the protection of the red cross and red crescent emblems and on instructions they have issued concerning medical personnel, units and means of transport, the establishment in peacetime of National Information Bureaux and the penal sanctions to be applied in the event of grave breaches of the law. It has also reported on practical measures taken by a number of countries, such as the creation of interministerial committees or the compiling of military manuals.

Spreading knowledge of international humanitarian law is a treaty-based obligation of States, stressed in the Conventions of 1949 and reaffirmed in the Protocols. The progress made in this regard is interesting in several respects. In 1949 it was still feared that dissemination of the law might be interpreted as an attempt to justify war. Yet by 1977 not only was dissemination seen as a crucial factor in ensuring application

<sup>21</sup> Hans-Peter Gasser, "Steps taken to encourage States to accept the 1977 Protocols". *IRRC*, No. 258, May-June 1987, p. 266.

of the law, but it was also considered to be a moral duty in that it served to propagate a spirit of peace and solidarity.

The ICRC, the National Red Cross and Red Crescent Societies and their Federation, which were already active in the field of dissemination, were called upon by the Diplomatic Conference to play an important role in supporting the States' dissemination policies. In 1978, dissemination activities were put on a systematic and structured footing by the Programme of Action of the Red Cross with respect to dissemination of knowledge of international humanitarian law and of the principles and ideals of the Red Cross. Initially established for a four-year period, and twice extended up to 1990, the programme's essential objectives were to conduct and coordinate activities relating to dissemination, education and research and to encourage States to become party to the Protocols. The text also describes the tasks to be undertaken by each of the Movement's components with support from the Henry Dunant Institute.

Referring to the *Oxford Manual* on the laws of land warfare, in 1880 Gustave Moynier wrote: "If this purpose is to be achieved, it is not enough for sovereigns to promulgate new laws. It is also essential that they disseminate knowledge of them ...".<sup>22</sup>

The dissemination of humanitarian law is hampered by the very nature, volume and complexity of its rules. Yet making as many people as possible familiar with the law has always been one of the primary goals of the Movement. This effort was given new impetus by the publication in 1979 of a collection of the "Fundamental rules of humanitarian law applicable in armed conflicts", which in seven maxims expresses the very essence of the law.<sup>23</sup> With a view to facilitating teaching of the law, the *Review* has also published summaries, outlines and synopses, which to this day are considered to be authoritative sources.<sup>24</sup>

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<sup>22</sup> Quoted by Paul Ruegger, "Gustave Moynier", *IRRC*, No. 178, January 1976, p. 6.

<sup>23</sup> The text of the "Fundamental rules of humanitarian law applicable in armed conflicts" is reproduced in *IRRC*, No. 206, September-October 1978, pp. 247-249.

<sup>24</sup> Some examples:

- Stanislaw E. Nahlik, "A brief outline of international humanitarian law", *IRRC*, No. 241, July-August 1984, pp. 187-226 (offprint with bibliography)
- Jean de Preux, *Synopses I to IX*, published in the *Review* between 1985 and 1989 (complete offprint)
- Technical note on the Protocols of 8 June 1977 additional to the Geneva Conventions, *IRRC*, No. 242, September-October 1984, pp. 274-277

Promoting a better understanding of humanitarian law also entails demonstrating that its principles and rules have their roots in all civilizations, religions and traditions. On a number of occasions the *Review* has published articles about the contribution of Christianity, Islam, Buddhism and African traditions to respect for the individual in time of armed conflict. "Historical and philosophical works on the humanitarian movement thus constitute not only an indispensable contribution to our knowledge of humanitarian law, but also an essential means of strengthening it, since legal rules are not followed as standard practice until they become part of the collective consciousness of all peoples and nations".<sup>25</sup> Within the Movement, a number of tactics have been used to disseminate the law among target groups, particularly the armed forces. These initiatives have been given wide coverage in the *Review*,<sup>26</sup> which also reports on training seminars organized by the ICRC in all parts of the world, usually in cooperation with National Societies or academic institutions.

Such activities, combined with the production of an impressive amount of written and audiovisual material, demonstrate how the Movement's greatest and most remarkable efforts over the past 20 years have been channelled into spreading knowledge of humanitarian law and the Fundamental Principles of the Red Cross. Yet dissemination of the law can be a thankless task, requiring self-sacrifice and professionalism as well as a firm belief in the long-term effects.

Although several States have understood the importance of disseminating humanitarian law and have taken measures accordingly, it is only too evident that the results are still inadequate.

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<sup>25</sup> Karel Vasak's "Conclusions" to the collective work *International Dimensions of Humanitarian Law*, UNESCO, Paris/Henry Dunant Institute, Geneva, 1986, p. 297.

<sup>26</sup> For example, between 1976 and 1993 over 1,000 high-ranking officers from 118 countries attended international courses for military officers on the law of armed conflict, organized by the San Remo Institute with the support of the ICRC. In this regard, the Institute's invaluable contribution to the development of the law cannot be overstated. As Jovica Patrnogic, Honorary President of the Institute, pointed out, "During the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts (1974 to 1977), the Institute organized annual round tables, between sessions of the Conference, at which those taking part in the Conference and others informally discussed the main issues and the means of resolving them. The ICRC gave its full support to this forum." "Working for a humanitarian dialogue. The International Institute of Humanitarian Law celebrates its twentieth anniversary", *IRRC*, No. 278, September-October 1990, pp. 449-455, at p. 453.

Round table meetings and seminars have been organized by the Institute jointly with the ICRC and other organizations for the purpose of discussing ways — like those described in this article — of revising, updating and adapting the law.

In order to keep up the momentum, the ICRC and the Federation drew up the "Guidelines for the '90s", a body of advice and rules for all those concerned with dissemination, and submitted them for approval by the Council of Delegates at its November 1991 session in Budapest. While the objectives of dissemination remain unchanged, methods have evolved. National Societies can no longer engage in dissemination as a separate activity; it must be associated with other practical services for the community. In certain cases, it may be useful to link the dissemination of humanitarian law with that of other branches of law, such as human rights or refugee law. Lastly, priority must be given to training instructors and other partners to serve as relays.<sup>27</sup>

Today, four years after the "Guidelines" were adopted, the chaotic nature of current conflicts, the growing numbers of civilian victims, and the increased dangers faced by operational personnel makes dissemination seem even more vital to prevent new outbreaks of violence or, failing that, to prevent breaches of the law. It would appear that the time has come for a new preventive strategy, one designed to help States engage in systematic dissemination of the law in peacetime among the armed forces and the police, and also among young people, academic circles and the media, and, in time of conflict or unrest, to set up ad hoc programmes that focus on the needs of actual or potential victims.

#### 4. Explaining and upholding the law

The dissemination process cannot be dissociated from the efforts made to explain the law and its provisions, if only to avoid reducing its scope through oversimplification or to prevent erroneous interpretations.

For this reason, the ICRC published *Commentaries* on the Geneva Conventions of 1949 and later on the Additional Protocols of 1977. Where necessary, the *Commentaries* were supplemented by studies in the *Review* that discussed important issues such as the protection of the civilian population, national liberation movements, internationalized internal conflicts, the role of neutral States, and violations of the law. The *Review* also addressed specific topics such as protection of medical activities,

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<sup>27</sup> René Kosirnik, "Dissemination of international humanitarian law and of the principles and ideals of the Red Cross and Red Crescent", and "Guidelines for the '90s", *IRRC*, No. 287, March-April 1992, pp. 173-178.

journalists on dangerous missions, cultural objects, national information bureaux, judicial guarantees, and the status of mercenaries.

Care should be taken, however, not to dismiss these explanatory studies as mere academic exercises, since they formed part of an ongoing process of reflection prompted, on the one hand, by the proliferation of internal conflicts in which women and children were the main victims and, on the other hand, by a plethora of population movements that swelled the ranks of refugees and displaced persons moving either across national borders or within their own countries. These conflicts also caused large-scale damage to the infrastructure and the environment, thereby severely hampering protection and assistance activities conducted under the terms of humanitarian law and revealing shortcomings in application of its provisions. Consequently, there were those who reached the rather hasty conclusion that the time had come to create new legal instruments geared to new conflict situations.

Faced with such arguments the ICRC felt there was a real danger that humanitarian law could become isolated, but was convinced that, instead of encouraging the drafting of new rules, it was vital to explain the law the better to uphold its provisions.

This approach was reflected in the *Review*, which published a number of articles on the protection of children, of refugees and displaced persons, and of the environment in times of conflict. These issues, particularly since the Gulf war, had triggered a number of separate initiatives on the part of the international community. The ICRC and the experts and practitioners consulted on the subject agreed that the existing law covered practically every situation and that it did afford sufficient protection as long as it was properly implemented and respected. Indeed, "the true problem does not really lie in the inadequacy of the norms, but in ignorance of or disregard for them ...".<sup>28</sup> And the true remedy can be summed in just a few basic principles — that States respect and ensure respect for the law, and make its rules widely known.<sup>29</sup>

<sup>28</sup> "Protection of the environment in armed conflicts", statement by the ICRC to the 47th Session of United Nations the General Assembly on 1 October 1992, in Antoine Bouvier, "Recent studies on the protection of the environment in time of armed conflict", *IRRC*, No. 291, November-December 1992, note 36, p. 565.

<sup>29</sup> At the conclusion of her article, "The protection of children during armed conflict situations", Sandra Singer exclaims: "What is needed is not more laws to protect the child in armed conflict situations. What is needed is dissemination and implementation of existing international humanitarian law", *IRRC*, No. 252, May-June 1986, pp. 133-167, at 166.

The conflict between Iraq and the Kurds in the wake of the Gulf war, and the wars in Somalia and the former Yugoslavia have highlighted the problems of humanitarian assistance and access to victims. The difficulties encountered in these conflicts shook the structure of humanitarian law to the core by giving rise to the notion of a "right of intervention on humanitarian grounds". That indicated a failure — or a refusal — to understand that the right to humanitarian assistance is a fundamental principle of humanitarian law. Over 20 provisions in the Geneva Conventions and the Protocols deal with the medical and material assistance to which the victims of armed conflicts are entitled. In this context, the law reflects moral values in that they both hold that assistance to a person in need cannot be regarded as interference.

Studies published in the *Review* since 1991 demonstrate how the notion of a right to interfere on humanitarian grounds as defined by its advocates does not stand up to scrutiny under existing humanitarian law. Nonetheless, as has been pointed out, "there is certainly room for improvement in means of implementation to facilitate access to victims, protect relief workers and coordinate their efforts".<sup>30</sup>

Which brings us to the crux of the matter. The law is there, it does exist, but the way in which it is applied leaves much to be desired owing to lack of political will on the part of the States concerned and to poor understanding of a law made difficult to grasp by complexity of its provisions.

Just as there is a need for better coordination in large-scale humanitarian operations between the United Nations system and other humanitarian organizations, an effort must be made to define the guiding principles and the enforceable rules of humanitarian law which take into account the specific stipulations of human rights law, refugee law, etc. One example of this is the "Guiding principles on the right to humanitarian assistance" adopted in April 1993 by the Council of the International Institute of Humanitarian Law in San Remo following its Round Table meeting on "The evolution of the right to assistance".<sup>31</sup>

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<sup>30</sup> Maurice Torrelli, "From humanitarian assistance to 'intervention on humanitarian grounds'?", *IRRC*, No. 288, May-June 1992, pp. 228-248. On this subject, see also: Yves Sandoz, "'Droit' ou 'devoir d'ingérence' and the right to assistance: the issues involved", *ibid.*, pp. 215-227; and Denise Plattner, "Assistance to the civilian population: the development and present state of international humanitarian law", *ibid.*, pp. 249-263.

<sup>31</sup> "Guiding Principles on the Right to Humanitarian Assistance", *IRRC*, No. 297, November-December 1993, pp. 519-525.

Admittedly, these guiding principles do not have the force of law, but they can help strengthen the law by adapting it where appropriate and can highlight areas requiring new provisions.

## 5. Adapting the law and introducing new provisions

Upholding the law also means adapting it to keep pace with the political, social and technical changes that take place in contemporary society.

In its role as a pioneer, the ICRC has consistently adhered to two golden rules: to take initiatives only on issues that fall strictly within its competence and never to propose new developments in the law until discussions have taken place with relevant sectors of the international community and expert opinions have been obtained.

In recent years the ICRC has focused its attention on three areas. The first concerns signals and the identification of persons and objects protected by international humanitarian law; the second concerns the conduct of hostilities and methods and means of warfare, particularly in internal conflicts; and the third concerns the protection of the individual against all forms of violence.

### (a) Signals and identification

The identification of medical personnel, units and transports is an essential element of the system of protection introduced by the 1864 Geneva Convention. The ICRC has always attached great importance to this issue, which has received ample coverage in the *Review*. Developments in aerial warfare, for example, prompted the institution to conduct aerial tests with the Swiss army on the visibility of the red cross and red crescent emblems from the air and to make improvements. Such tests took place in 1936, and most recently in 1990.

Technological advances, however, have profoundly affected methods and means of warfare, so that the distinctive emblem alone no longer affords sufficient protection for medical personnel, units and transports. Systematic research has been undertaken to develop the use of radio-communications, radar, underwater acoustic signals, and light signals.

In 1990, a meeting of technical experts convened by the ICRC set about reviewing Annex I of Protocol I to incorporate the technical provisions already adopted by the competent international organizations. The

review process lasted until 1993, and the amendments proposed by the experts came into force on 1 March 1994.<sup>32</sup>

It would now appear that identification is no longer a technical problem, but an issue that depends largely on the will of the parties concerned. Indeed, as one ICRC expert pointed out, parties should "recognize the right of protected transports and those not involved in a conflict to use all technical means of identification available today, in order to avoid being taken as targets, or even destroyed, by belligerent forces".<sup>33</sup>

### (b) The conduct of hostilities

As regards the conduct of hostilities, Protocol I of 1977 reaffirms two fundamental rules of humanitarian law, namely: "the right of the Parties to the conflict to choose methods or means of warfare is not unlimited", and "it is prohibited to employ weapons, projectiles and material and methods of warfare of a nature to cause superfluous injury or unnecessary suffering" (Article 35, paras. 1 and 2). These rules have been developed and implemented by a series of international instruments, ranging from the 1868 Declaration of St. Petersburg, which prohibited the use of certain types of projectiles in time of war, to the 1980 Convention on prohibitions or restrictions on the use of certain conventional weapons which may be deemed to be excessively injurious or to have indiscriminate effects. They have been reflected in a growing number of limitations on methods and means of warfare and the choice of targets, all taking due account of the principles of proportionality and discrimination. In the words of one former member of the ICRC: "Looking at the progress achieved in the past 125 years, therefore, one might conclude that this evolution represents triumphant progress in the field of arms control, steadily limiting the area, means, methods and targets of warfare, thus efficiently taming the tragedy of war and reducing the amount of suffering and damage it brings about."

Nonetheless, the author sagely adds: "... the evolution of constraints reducing the suffering and damage of warfare must always be seen in conjunction with the lethal and destructive power of the means and methods of combat available. In this connection a far less positive evalua-

<sup>32</sup> "Entry into force of the amended version of Annex I to Protocol I, concerning technical means of identifying medical units and transports", *IRRC*, No. 298, January-February 1994, pp. 27-41.

<sup>33</sup> Gérald Cauderay, "Means of identification for protected medical transports", *IRRC*, No. 300, May-June 1994, p. 277.

tion seems appropriate: While international humanitarian law has made undeniable progress, the ‘progress’ made in terms of killing and the destructive power of the weapons available has also kept growing and seems to have grown even faster [...] Nevertheless, one cannot but conclude that in the absence of the extension and consolidation that has taken place in the field of international humanitarian law the consequences would be unimaginably more tragic”.<sup>34</sup>

Recognizing this close link between humanitarian law and arms control, the ICRC has for many years taken an interest in the matter of weapons of mass destruction. In 1925, for example, the institution played an active role in preparing the Geneva Protocol for the prohibition of the use in war of asphyxiating, poisonous or other gases, and of bacteriological methods of warfare. More recently, it was instrumental in the drafting of the 1980 Convention on prohibitions or restrictions on the use of certain conventional weapons. In accordance with its mandate, the ICRC has also taken action to ensure that States respect the obligations incumbent on them under humanitarian law with regard to the conduct of hostilities, in particular Article 36 of Protocol I, which obliges States to determine whether the employment of a new weapon would be prohibited by the rules of international law.

In line with its usual policy, the ICRC encouraged experts from all backgrounds to formulate their views on the subject and consider ways of improving the law. The *Review's* special issue on conventional weapons marking the tenth anniversary of the 1980 Convention gave experts, jurists and military personnel the opportunity to evaluate the contents of the Convention and its three Protocols and to underscore its shortcomings, notably the absence of provisions to prevent the excessive damage wreaked by current conflicts, particularly internal ones.

The question of the applicability of rules governing the conduct of hostilities to non-international armed conflicts was not addressed in the 1980 Convention for reasons connected with possible interference in national sovereignty. Yet this is the area where the need for new developments in the law is most pressing, and in this regard the San Remo Institute should be commended for the work done at a Round Table which led in 1989 to the adoption of the “Rules of international humanitarian law governing the conduct of hostilities in non-international armed conflicts”.<sup>35</sup>

<sup>34</sup> Daniel Frei, “International Humanitarian Law and Arms Control”, *IRRC*, No. 267, November-December 1988, pp. 491-504, at p. 497.

<sup>35</sup> *IRRC*, No. 278, September-October 1990, pp. 383-408.

The forthcoming Review Conference of the 1980 Convention on prohibitions or restrictions on the use of certain conventional weapons will provide an opportunity for close examination of the problems caused by the use of certain weapons, for adapting the law accordingly and for deciding on measures to be taken with regard to new weaponry.

The ICRC has prepared the ground by organizing meetings of experts on anti-personnel mines and by contributing to studies of new weaponry, particularly blinding weapons.<sup>36</sup> It is up to the States to draw the appropriate conclusions.

### (c) Protecting the individual against violence

One of the ICRC's priorities is to provide protection for the individual in situations not normally covered by humanitarian law, generally described as internal disturbances and other situations of internal violence.

The adoption of fundamental guarantees that protect individuals not only from the enemy but also from their own governments, such as those stipulated in Article 75 of Protocol I and Article 4 of Protocol II, was undoubtedly a major step towards the universal protection of victims. However, there is an important condition for the application of these guarantees, namely, the existence of an armed conflict as defined by humanitarian law.

By the exercise of its right of initiative, the ICRC has acquired unique experience in the field of internal disturbances and tension. Since 1918, when it conducted its first visit to security detainees, the ICRC has constantly expanded its activities to protect the fundamental rights of the individual in these situations that are not covered by the law, and has diversified its action in response to various forms of violence. The ICRC's role in this respect nowadays is not to take action itself, "but to approach those in power to ensure that they are aware of and meet their humanitarian responsibilities both inside and outside places of detention".<sup>37</sup>

The ICRC has an established policy governing its protection and assistance activities for detainees and its response to indiscriminate violence against defenceless persons, hostage-taking and forced

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<sup>36</sup> See special issue of the *Review*, No. 299, March-April 1994, pp. 93-193.

<sup>37</sup> Marion Harroff-Tavel, "Action taken by the International Committee of the Red Cross in situations of internal violence", *IRRC*, No. 294, May-June 1993, p. 220.

disappearances.<sup>38</sup> While its offers of services can no longer be regarded as interference in the internal affairs of States, it nonetheless holds true that States are under no obligation to accept such offers.

The late 1980s saw a number of developments in the codification of international rules intended for situations of internal disturbances and tension.

In this regard, in 1988 the *Review* published two "trial balloon" articles. The first, written by an eminent international lawyer, was a draft Model Declaration containing "an irreducible and non-derogable core of human and humanitarian norms that must be applied in situations of internal strife and violence". The other was a draft Code of Conduct prepared by an ICRC expert. The Code set out the generally applicable fundamental rules, and was intended first and foremost as an instrument of dissemination appealing to the individual conscience.<sup>39</sup>

Both texts are based on a set of fundamental standards deriving from general legal principles, international humanitarian law, and the non-derogable rules of the international law of human rights. Although the approaches adopted by these two texts are complementary, they differ in several respects. For example, the Declaration, which is primarily addressed to States and to citizens, seeks to codify international rules, backed by procedural provisions, that protect the individual in situations of internal disturbances and tension. The Code of Conduct, on the other hand, is mostly concerned with victims, and appeals to all those who may commit acts of violence to respect the fundamental rules of behaviour. The former refers mostly to the law; the latter is more of an appeal to moral considerations.

The publication of these texts sparked the interest of jurists in a number of universities and international organizations. The result, at the conclusion of a meeting held in Turku, Finland, in 1990, was a "Declaration of minimum humanitarian standards", the purpose of which was to codify certain basic rules to be respected in times of internal disturbances and tension, or during periods when the public is exposed to exceptional danger.<sup>40</sup> The Declaration prescribes a normative approach,

<sup>38</sup> "ICRC protection and assistance activities in situations not covered by international humanitarian law", *IRRC*, No. 262, January-February 1988, pp. 9-37.

<sup>39</sup> Theodor Meron, "Draft Model Declaration in internal strife", and Hans-Peter Gasser, "A measure of humanity in internal disturbances and tensions: proposal for a Code of Conduct", *IRRC*, No. 262, January-February 1988, pp. 38-76.

<sup>40</sup> *IRRC*, No. 282, May-June 1991, pp. 328-336.

the first step towards codification of the international rules currently in force. It was recently introduced — albeit timidly — into the United Nations system when the Commission on Human Rights decided to invite States to voice their views on its content.

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As we conclude this review of the evolution of humanitarian law over the past 25 years, one question that the ICRC was already asking ten years ago comes to mind: What is the best way of developing the law as the century draws to a close? Should one "draft new legal provisions in the form of a treaty binding on the parties or [...] work out a (non-binding) declaration of general principles whose applicability is proclaimed as a matter of course"?<sup>41</sup>

Where there is a lacuna in the law, a generalized declaration could prompt the drafting of a legal instrument creating new law, and in this respect the Turku Declaration might be a preliminary step towards the codification of principles and rules specific to situations of violence.

As regards situations already covered by existing treaties, on the other hand, a declaration of principles might be prejudicial to the obligatory legal provisions in that it could weaken respect for the existing law. "Is there not a danger that governments may hide behind general principles — which are more easily respected due to their general character — in order to evade specific treaty obligations?"<sup>42</sup>

In fact, faced with the proliferation of situations of violence, the challenge for the years ahead lies not so much in new codifications, which are all too often subject to the vagaries of politics, but rather in "the rooting of the existing values and standards, if possible even progressively extending them by means of a generous interpretation and application".<sup>43</sup>

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<sup>41</sup> Hans-Peter Gasser, "Some Reflections on the Future of International Humanitarian Law", *IRRC*, No. 238, January-February 1984, pp. 18-25, at p. 24.

<sup>42</sup> *Ibid.*

<sup>43</sup> Michel Veuthey, "Guerrilla warfare and humanitarian law", *IRRC*, No. 234, May-June 1983, p. 136.

The same message was delivered by the International Conference for the Protection of War Victims (Geneva, August-September 1993). Many participants at the Conference reaffirmed the value of existing humanitarian law while stressing that some rules required clarification or further development. Thus — as this survey of the *Review* demonstrates — too much emphasis cannot be given to the usefulness of simple rules of execution and of clear guidelines that can be used to explain and adapt the law, minimize its shortcomings, and even make up for its deficiencies. Such an approach has proved its worth in areas such as the conduct of hostilities in internal strife, humanitarian assistance, protection of the environment, and naval warfare.

Apart from providing an opportunity to take stock of the law some 16 years after the adoption of the Additional Protocols, the main purpose of the Conference was to seek means of curbing the suffering and horror wrought by present-day conflicts which themselves are the products of hatred, fanaticism and intolerance. The States refused to accept the current human tragedies as inevitable; instead they pledged to do everything in their power to prevent such situations. It is to be hoped that the Final Declaration adopted by the Conference will give new impetus to humanitarian mobilization, will make humanitarian law truly universal and place its dissemination on a systematic footing, and will put an end to grave violations of its provisions.

We must trust in the words of Gustave Moynier, whose message is more relevant now than ever before. "By strengthening one point after another, we shall build an unbroken line of defence that will humanize war as far as possible. To put it plainly, treaties drafted specially for the purpose of attenuating the horrors of war will probably grow in number. Treaties already in existence will lead to others, designed either to supplement the existing treaties or to remedy their deficiencies. As time goes by, international legislation will become an increasingly faithful reflection of contemporary standards. This might even lead to a general codification of the law of war."<sup>44</sup>

(*To be continued*)\*\*

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<sup>44</sup> Gustave Moynier, *op. cit.*, pp. 30-31.

\*\* Section to follow:

III — The Movement: solidarity and unity

## BIBLIOGRAPHICAL NOTES

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# Remembering Hiroshima

by François Bugnion

The seventh largest city in Japan by population size, located on the mouth of the Ota River, whose muddy waters pour into the Inland Sea, Hiroshima had been almost spared by the bombing until the summer of 1945.

At dawn on 6 August 1945, four reconnaissance planes flew over the city and disappeared again without dropping any bombs. At 7:31 the sirens signaled the end of the alert. The inhabitants left their shelters and went about their business.

Three-quarters of an hour later few of them noticed an American B-29 bomber flying at a very high altitude in a cloudless sky. Once over the city, the aircraft dropped an object barely larger than a standard bomb.

Forty-three seconds later, a flash a thousand times brighter than the sun set the sky afire, immediately followed by an incandescent heat and, a few moments later, a whirlwind which swept away everything in its path.

The terrifying heat released by the atomic bomb turned the city centre into one giant furnace, which in its turn caused a violent wind to pick up. The fire spread from neighbourhood to neighbourhood before dying out from lack of fuel, around the middle of the afternoon. By that time the entire city was gone.

Everything within a radius of one kilometre from the point of explosion was obliterated, to the extent that even a building's foundations were unrecognizable. Alone, on the banks of one of the arms of the Ota River, remained the bare skeleton of the Sei Hospital over which towered the metallic frame of an enormous glass dome which was to become the symbol of the disaster.

All around, within four to five kilometres of the bomb's epicentre, houses had been reduced to rubble, trees uprooted, vehicles hurled about,

and railway lines twisted as if by some supernatural force. In all, 90% of buildings were destroyed or badly damaged. Windows were shattered as far as 27 kilometres from the point of impact.

About 80,000 people were killed in the explosion and almost as many suffered serious injuries. Many were to die in the weeks and months that followed, in terrible agony from the burns they sustained or from the effects of the radiation: internal haemorrhaging, cancer, leukaemia.<sup>1</sup>

It was 8:15 in the morning. The world had entered a new era dominated by the nuclear threat: humanity had acquired the means to bring about its own annihilation.

Three days later another bomb destroyed the city of Nagasaki, with consequences as horrifying as in Hiroshima. Just a few hours earlier the Soviet Union had declared war on Japan and its armies had begun to invade Manchuria, where the Sino-Japanese war had begun 14 years before.

On 15 August, speaking to his people for the first time over the radio, Emperor Hirohito announced that Japan was accepting the Allied ultimatum and, on 2 September, General Torashivo Kawabe signed his country's surrender on the bridge of the battleship *USS Missouri* anchored in Tokyo Bay. The Second World War was over.



The Japanese Red Cross Society was the first National Society to be set up in Asia. It was also the most efficient organization with the most extensive resources. The hospital it ran in Hiroshima had miraculously

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<sup>1</sup> There are major divergences as regards the number of victims of the disaster. The report from the US Commission on the effects of strategic bombing gives the figures of 80,000 killed and as many injured (*The United States Strategic Bombing Survey, The Effects of Atomic Bombs on Hiroshima and Nagasaki*, Chairman's Office, 30 June 1946, Washington, United States Government Printing Office, 1946, p. 3). A survey carried out by the Hiroshima City Council up to 10 August 1946 arrived at the following figures, for a civil population of 320,081 inhabitants, on the day of the explosion: 118,661 killed, 30,524 seriously injured, 48,606 slightly injured, and 3,677 missing (*Hiroshima and Nagasaki, The Physical, Medical and Social Effects of the Atomic Bombings*, The Committee for the Compilation of Material Damage caused by the Atomic Bombs in Hiroshima and Nagasaki, translated by Eisei Ishikawa and David L. Swain, New York, Basic Book Publishers, 1981, p. 113).

been spared, although the doors and windows had been blown out by the blast and part of the roof had caved in. Thousands of the injured were able to receive treatment there.

The day after the disaster several medical teams from the Japanese Red Cross Society arrived in Hiroshima from neighbouring towns. Two of these teams helped the staff at the Japanese Red Cross hospital, while the others served in improvised dispensaries, set up in tents in different parts of the devastated city. A total of 792 staff members and volunteer workers from the Japanese Red Cross Society treated some 31,000 patients during the three weeks following the disaster.<sup>2</sup>

Relief operations were, however, seriously hindered by the scale of the catastrophe and the number of victims, the shortage of staff and appropriate equipment and supplies, by the incurable nature of some of the wounds and the uncertainty as to the treatment required; there were no medicines; hygiene conditions were appalling because of the heat and the lack of drinking water, causing wounds to become infected and epidemics to spread. In addition, many relief workers who came in to help the victims in the hours and days that followed were themselves affected by the radiation.

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From the start of the war, the International Committee of the Red Cross had maintained a small delegation in Japan, whose task was to assist Allied prisoners of war held in the archipelago. It came up against the greatest difficulties and, in particular, total incomprehension on the part of the military in power in Tokyo.

On 29 August an ICRC delegate, Fritz Bilfinger, was able to reach Hiroshima. He was the first neutral witness to arrive on the scene of the disaster, and the telegramme he sent the next day to the delegation conveys the full extent of the tragedy:

*"Visited Hiroshima thirtieth, conditions appalling stop city wiped out, eighty percent all hospitals destroyed or seriously damaged; inspected two emergency hospitals, conditions beyond description fullstop effect of*

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<sup>2</sup> According to information supplied to the author by the Japanese Red Cross Society on 5 June 1995.

*bomb mysteriously serious stop many victims, apparently recovering, suddenly suffer fatal relapse due to decomposition of white blood cells and other internal injuries, now dying in great numbers stop estimated still over one hundred thousand wounded in emergency hospitals located surroundings, sadly lacking bandaging materials, medicines stop please solemnly appeal to allied high command consider immediate air-drop relief action over centre city stop required: substantial quantities bandages, surgical pads, ointments for burns, sulphonamides, also blood plasma and transfusion equipment stop immediate action highly desirable, also despatch medical investigation commission stop report follows; confirm receipt".<sup>3</sup>*

The head of the ICRC delegation, Dr Marcel Junod, immediately contacted the Japanese authorities and the Supreme Allied Command, which were starting to deploy in the archipelago.

On 8 September it was Dr Junod's turn to fly to Hiroshima, accompanied by a US commission of enquiry and Dr Tzusuki, a professor of radiology at the University of Tokyo. He brought with him 12 tonnes of medicines and dressings donated by the US authorities.

His observations fully confirmed the apocalyptic vision conveyed in Fritz Bilfinger's telegramme: the annihilation of an entire city where, "*there was nothing but silence and desolation*", the extremely serious and, in many cases, fatal nature of the injuries from 'burns and radiation, the overcrowding of make-shift hospitals, the lack of equipment and medicines, the powerlessness of medical staff, also decimated and having to cope with totally new types of wounds for which there was no treatment, and finally the despondency of the survivors faced with a disaster which, like lightening, had wiped out their city.<sup>4</sup>

The ICRC did not wait to receive the reports from its delegates before taking a stand on the new means of mass destruction with which mankind had equipped itself. In a circular to the National Societies dated 5 September 1945 — less than one month after Hiroshima — on the end of the hostilities and the future tasks of the Red Cross, the ICRC was already questioning the lawfulness of atomic weapons and appealing to States to reach an agreement banning their use:

<sup>3</sup> Fritz Bilfinger, telegramme dated 30 August 1945, copy, ICRC Archives, file No. G. 8/76.

<sup>4</sup> Dr Marcel Junod, *The Hiroshima Disaster*, extract from the *International Review of the Red Cross*, September-October and November-December 1982.

"War—which remains an anomaly in a civilized world—has undoubtedly become so devastating and universal, amidst the web of conflicting interests on the various continents, that every thought and every effort ought to be directed first and foremost at making it impossible. But the Red Cross should nonetheless continue, of necessity, its traditional activity in the field of human rights, which is to safeguard the requirements of humanity in times of war. The apparent untimeliness of this task, when peace appears finally to have returned, must not distract the Red Cross from this essential duty. The greater the destructive power of war, the greater the necessity—in protest against this reversal of values—to spread the light of humanity, no matter how small, into the infinite darkness.

One may wonder, however, [...] whether the latest developments in warfare technology still leave room, in international law, for any sound, valid order. The First World War already, and even more so the disasters of the past six years, have shown that the conditions which enabled international law to find its traditional expression in the Geneva and Hague Conventions have undergone profound changes. It is primarily obvious that, owing to the progress in aviation and the increased impact of bombing, the distinctions established so far in terms of the categories of individuals who ought to receive special protection—particularly, in the case of civilians, protection from the armed forces—have become practically inapplicable. The development of means of warfare and, therefore, of war itself, has been rendered all the more lethal by the use of discoveries in atomic physics as a weapon of war of unprecedented effectiveness.

It would be pointless to anticipate the future of this new weapon, or even to express the hope that the Powers might give it up entirely. Will they at least want to keep it in reserve, so to speak, in a lasting, secure way, as an ultimate guarantee against war and as a means to safeguard a balanced order? Such a hope is perhaps not entirely vain as, during the past six years of fighting, there has been no use of certain toxic or bacteriological weapons banned by the Powers in 1925. Let us remember this fact of a period which has seen so many violations of the law and so many reprisals."<sup>5</sup>

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<sup>5</sup> "La fin des hostilités et les tâches futures de la Croix-Rouge" (The end of the fighting and the future tasks of the Red Cross), 370th Circular to the Central Committees, 5 September 1945, *Revue internationale de la Croix-Rouge (RICR)*, No. 321, September 1945, pp. 657-662, *ad*, pp. 659-660. The ICRC was to return to this issue in an appeal on 5 April 1950, entitled "Armes atomiques et armes aveugles" (Atomic weapons and non-directed weapons), *RICR*, No. 376, April 1950, pp. 251-255.

The ICRC's concerns were those of the entire Red Cross: in a resolution adopted unanimously, the Seventeenth International Red Cross Conference, meeting in Stockholm in August 1948, requested the States "*solemnly to undertake to prohibit absolutely all recourse to [non-directed weapons] and to the use of atomic energy or any similar force for purposes of warfare.*"<sup>6</sup>

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Fifty years after Hiroshima, the States have still not managed to come to an agreement on banning nuclear weapons, which remain the cornerstone of the defence strategy of the Powers possessing them, in particular the five permanent members of the Security Council.

However, despite the very profound crises which marked the Cold War, nuclear weapons have never been used since Hiroshima and Nagasaki. No doubt the example of the destruction of the two Japanese cities, and the conviction that the Nuclear Powers on both sides had the means of mutual destruction, were a deterrent sufficient to prevent any recourse to these monstrous weapons.

On the other hand, during the 45 years that elapsed between the end of the Second World War and the destruction of the Berlin Wall, humanity lived under the constant threat of nuclear arsenals capable of destroying all human life on earth. This remained an implicit threat for long periods of time but was openly flourished in moments of crisis, notably during the Suez crisis (1956), the Arab-Israeli war in October 1973, and in particular the Cuban missile crisis in October 1962.

This threat abated with the end of the Cold War. But despite the recent renewal of the Treaty on the Non-Proliferation of Nuclear Weapons the risk of proliferation has increased since the break-up of the USSR. Several States make no secret of their ambition to acquire nuclear weapons, and the vigilance which the Great Powers exercised for more than 40 years has slackened off since the end of the Cold War. So, although the threat of full-scale nuclear war has now receded, the

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<sup>6</sup> Resolution XXIV, *Seventeenth International Red Cross Conference, Stockholm, 1948.*

danger of proliferation of nuclear weapons remains greater than ever. This is undoubtedly the most serious threat currently hanging over humanity.

**François Bugnion**, Arts graduate and Doctor of Political Science, entered the service of the ICRC in 1970. He served the institution in Israel and the occupied territories (1970-1972), in Bangladesh (1973-1974) and more briefly in Turkey and Cyprus (1974), Chad (1978), Viet Nam and Cambodia (1979). Since 1989, he has been Deputy Director of the ICRC Department for Principles, Law and Relations with the International Red Cross and Red Crescent Movement. He is the author of: *Le Comité international de la Croix-Rouge et la protection des victimes de la guerre* (ICRC, Geneva, 1994).

## **DEATH OF MR HANS HAUG**

The ICRC was very sad to learn of the death in St. Gallen on 12 April 1995 of Mr Hans Haug, an honorary member of the Committee.

Born in 1921 in St. Gallen, Mr Haug studied law at the Universities of Geneva and Zurich. In 1967 he was appointed to the chair of public international law at the St. Gallen School of Advanced Economic and Social Studies and remained in this post until 1986.

Mr Haug joined the Swiss Red Cross in 1946; he was appointed Secretary General of the Society in 1952 and was its President from 1968 to 1982. Meanwhile, also from 1968 to 1982, he was one of the Vice-Presidents of the League of Red Cross Societies (now the Federation), an *ex-officio* post which automatically falls to the President of the Swiss Red Cross. He was furthermore a member of the Council of the Henry Dunant Institute as from 1971 and was Chairman of the Institute's Council and Assembly from 1978 to 1980.

He was invited to join the ICRC as a member of the Committee, the ICRC's governing board, in March 1983 and was appointed an honorary member in 1992.

With the death of Mr Hans Haug, the International Red Cross and Red Crescent Movement has lost a man of great dedication who played a decisive role, both nationally and internationally, in its work. As President of the Swiss Red Cross he gave the necessary impetus to the National Society's activities to help others, whilst as Vice-President of the League and later as member of the ICRC, he skilfully promoted dialogue amongst the representatives of all the National Societies and spared no efforts to enhance the Movement's cohesion and the efficiency of its action.

In his exemplary commitment for more than forty years to the Red Cross and Red Crescent, and true to the tradition of the founders of the Red Cross, he was always mindful of the linkage between action and the law. Through his research and teaching he contributed actively to the development and propagation of humanitarian law. The long list of his

publications reflects his numerous spheres of interest, ranging from humanitarian law itself to the Fundamental Principles of the Red Cross and Red Crescent, the Movement's contribution to peace and the fight against torture.

He left us valuable guidance in his book entitled *Humanity for All — The International Red Cross and Red Crescent Movement*, which is a remarkable expression of his all-embracing view of the message of the Red Cross and Red Crescent.

Hans Haug, a man of wisdom, perseverance, integrity and strong principles, mellowed by a typically Swiss German sense of humour, was a true Red Cross man who rendered exceptional service to the cause of the Red Cross.

All his numerous friends at the ICRC, the Federation and within the National Societies mourn his passing. And, as the President of the ICRC, Mr. Cornelio Sommaruga stressed when accompanying Hans Haug to his last resting place: "Humankind will be grateful to him. His message will remain engraved in our memory".

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## PRESS CONFERENCE GIVEN BY THE PRESIDENT OF THE ICRC

(Geneva, 30 May 1995)

*At his annual press conference on 30 May 1995, ICRC President Cornelio Sommaruga began by referring to the recent 50th anniversary of the end of the Second World War in Europe and deplored the ICRC's moral failure regarding the Holocaust, when "it did not succeed in moving beyond the limited legal framework established by the States".*

*Commenting on the grave conflicts currently raging around the world, in particular those in Bosnia-Herzegovina, Rwanda and Chechnya, President Sommaruga stressed the responsibility of the States when grave breaches of international humanitarian law are committed.*

*The Review is pleased to publish the text of the president's introductory statement.*

This year, commemorations held around the world serve to remind us of the unspeakable suffering that six years of war inflicted upon humanity half a century ago.

We have evoked painful memories so as not to forget, to remind ourselves again and again of something that the whole world vowed in 1945 — never again!

We have taken another look at our own share of the responsibility for the almost complete failure by a culture, indeed a civilization, to prevent the systematic genocide of an entire people and of certain minority groups.

Of course we must not forget what the ICRC managed to achieve during the Second World War, in particular for prisoners of war. It was a gigantic and magnificent task.

But believe me, every moment spent today on our humanitarian responsibilities to assist the victims of war and political violence reminds me of our institution's moral failure with regard to the Holocaust, since it did not succeed in moving beyond the limited legal framework established by the States. Today's ICRC can only regret the possible omissions and errors of the past!

Moreover, our involvement in the work of the International Tracing Service in Arolsen, Germany, which the ICRC has been managing for exactly 40 years now and where the archives pertaining to all the civilian victims of the Third Reich are being kept, is a daily reminder of the agony endured by millions of people who were tortured or exterminated.

In this connection I should like to remind you that in 1934 the ICRC submitted a draft convention before the International Conference of the Red Cross in Tokyo, setting out important protective measures for civilian populations in enemy hands and in occupied territories. While history unfortunately proved us to be tragically right, the initiative did not receive the support it required from the States.

It was only after the war, in 1949, that the States introduced these proposals as an extension of humanitarian law. Today, 185 of the world's 189 States have ratified the Geneva Conventions. And not only have States pledged to apply the Conventions themselves, but also to do everything within their power to ensure that all other States respect them too.

Thus all the States are jointly responsible for ensuring that even in the thick of war — including civil war — certain elementary humanitarian principles are respected, and that special protection is afforded to the wounded, prisoners of war, and civilians.

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Fifty years ago, some circles justified their passive behaviour by claiming they were unaware of the extent of the atrocities committed by the Nazis. More recently, others have said they did not know about the events in Cambodia in the late 1970s.

These days nobody — whether they are private citizens or agencies in charge of humanitarian action, and especially if they are State representatives — can hide behind real or faked ignorance.

Nobody can claim to be ignorant about what has happened in Somalia, or what has occurred and is still occurring in Rwanda, or the events in Bosnia-Herzegovina — which are extremely serious — or what has happened and is still happening in Chechnya, to quote but a few examples.

Nowadays, the international community is fully aware of the large-scale and extremely serious violations of the Geneva Conventions.

While the absence of provisions of international law to protect civilians in time of conflict does not exonerate anyone — least of all the ICRC — from their moral responsibility for events that occurred over 50 years ago, there is even less reason today to contest the joint respon-

sibility of the community of States, and of each State party to the Conventions.

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Some people say that international humanitarian law is outmoded, that it does not apply to all situations of massive armed violence, and that the joint responsibility of States to respect the law can no longer be considered as binding.

Mention has also been made of "complex emergency situations", and it has been said that some traditional military operations are nothing more than police action. Others have claimed that the tribal warfare and ethnic clashes in Africa and Afghanistan are not covered by any aspects of international law. Still others speak of "low intensity" conflicts.

Let me tell you this:

What we have today is organized, large-scale and systematic armed violence, even if some of the combatants are armed only with machetes and screwdrivers — as in the case of Rwanda, there is widespread armed violence, even if it appears anarchic and seems to have no other motive than depredation or, purely and simply, the elimination of the other side — as has happened in some West African countries and is still happening in Somalia.

What can we say about an incursion over an international border by thousands of troops armed with sophisticated military weaponry — like the kind used by Turkey in Iraqi Kurdistan?

Or what about large-scale traditional military operations conducted partly by units attached to the Ministry of the Interior — as is the case in Chechnya?

In all these situations, and many others like them, there are hundreds of thousands of unarmed civilians caught in the crossfire, there are tens of thousands of people wounded, and hundreds if not thousands of prisoners. Today, our thoughts obviously turn in particular to all the armed violence which is being directed and organized by political entities in Bosnia-Herzegovina.

There is a name for all these situations. They are called "war".

International humanitarian law does apply to war, and States are therefore bound by their joint responsibility to ensure respect for the law. The use of euphemisms for armed conflicts does not free States from their obligations.

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First and foremost, these obligations are political.

I am referring in particular to the efforts made before the outbreak of an armed conflict — that is, attempts to prevent conflicts, political mediation by the United Nations, and all the bilateral and regional initiatives taken to this end.

At this level the joint responsibility of States plays a key role, and all necessary resources — including appropriate military means — must therefore be made available to the international community's institutions to enable them to bring about political solutions.

The State's joint responsibility before the outbreak of a conflict, and during the conflict itself, is equally engaged in a much wider context — the arms trade. Let us not forget that the anniversary of the Hiroshima bombing is fast approaching. The dangers of the proliferation of nuclear weapons — so much more powerful today than they were 50 years ago — not to mention chemical and bacteriological weapons, cannot be ignored.

This is why the international community, which has already reached a consensus on nuclear non-proliferation, must do everything within its power as a matter of urgency to reach agreements on limiting the transfer of conventional weapons, and on ensuring respect for the control measures already adopted on a number of occasions.

At this point I should like to express my hope that the conference scheduled for September in Vienna to review the 1980 Weapons Convention will have tangible results, that it will put an end to the scourge of anti-personnel landmines, and stamp out new evils — like portable laser weapons, which are blinding weapons — before they can even begin to take hold.

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In cases where it has not been possible to prevent the outbreak of conflicts, political intervention and the security measures taken by the international community must remain credible. For where there is such intervention, there can be no double standards. Nor can intervention be limited to a purely palliative humanitarian commitment.

When the international community has succeeded, through diplomatic or military means, in putting an end to or in limiting the extent of armed violence, when it establishes a military presence or deploys observers in conflict situations that are still rife, it must always firmly remind the belligerents to comply with their obligations under international humanitarian law.

Here I emphasize that the rights of civilians and prisoners are inalienable. They must on no account be bartered for some political concession, as is, alas, frequently the case in the conflict raging in Bosnia-Herzegovina. The law likewise prohibits using anyone — be it a civilian or a combatant — as a human shield.

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The joint responsibility of States in the political sphere obviously also includes humanitarian action, which, I repeat, must not serve as a substitute for political action. The States' involvement in humanitarian operations must translate primarily into unfailing support for organizations that are capable of assuming responsibility for these operations in the long term, and of doing so with complete impartiality, outside of any political controversy.

Here too, the States must not pass off their political responsibility onto the humanitarian agencies. I shall illustrate my point with only one example of the problems which we are currently facing in Rwanda.

The international community has committed itself to helping the Rwandan people rebuild their homeland after the genocide that it did not seek to prevent.

It has undertaken to see that a national and international judicial process be set up to enable the country to put an end to the infernal spiral of violence.

Today the ICRC is alone in providing food to more than 43,000 prisoners being held in appalling conditions, in supplying them with

water, in doing whatever it can to restore adequate standards of hygiene and in trying to ensure that no one goes missing. There are small children and elderly people being detained in Rwandan prisons. Widespread arbitrary practices further aggravate the plight of this totally destitute population. The current situation can only lead to further violence.

We have urgently requested that new, more salubrious places of detention be set up.

There are solutions to the problem. The international community has the possibility of taking immediate action. And yet it does not assume its responsibilities in these matters, which are of a purely political nature. It leaves us to cope with the situation.

It is we who are now taking part directly — and quite exceptionally — in the installation of new detention camps, in order to save lives.

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The ICRC shares a certain number of responsibilities with the States. It is the guardian and promoter of international humanitarian law.

It assumes its share of the responsibilities first of all by conducting its humanitarian activities wherever there are victims of conflict and political violence whom it can help to survive, and by seeking to ensure that they are shielded from the excesses of armed violence and its consequences. The ICRC is active today in 32 countries at war. It runs its operations with substantial support from the National Red Cross and Red Crescent Societies, some of which operate autonomously under its coordination. Here I should like to pay tribute to all the National Society staff and local employees working in delegations in the field, who are doing outstanding humanitarian work.

The ICRC moreover places its services as a specifically neutral organization at the disposal of the States in order to facilitate their political negotiations. This is the framework in which our delegates have worked and are still working in Mexico and Sri Lanka, and might yet be called upon to do so in Colombia.

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We also share the State's responsibility in taking preventive action, in particular by stepping up our efforts to spread knowledge of international humanitarian law.

We have just decided to set up a new unit which will advise the States on introducing into their domestic legislation all provisions required to repress serious violations of the Geneva Conventions.

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Finally, I should like to remind you that the 26th International Conference of the Red Cross and Red Crescent will take place this coming December in Geneva.

The Conference will bring together representatives of the States party to the Geneva Conventions and of all the National Red Cross and Red Crescent Societies, their Federation, and the ICRC.

We shall not propose, as was the case in Tokyo in 1934, the adoption of new provisions of international humanitarian law.

Existing law covers all situations of armed conflict, and all that is required is the political resolve to apply it.

But — as I am doing with you today — the ICRC and the entire International Red Cross and Red Crescent Movement will firmly impress upon the States that it is their joint responsibility to respect and ensure respect for international humanitarian law.

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*PREPARING FOR THE 26TH INTERNATIONAL CONFERENCE  
OF THE RED CROSS AND RED CRESCENT*

*(Geneva, 3-7 December 1995)*

**SECOND MEETING OF LEGAL ADVISERS  
OF NATIONAL RED CROSS  
AND RED CRESCENT SOCIETIES**

*(Geneva, 6-7 March 1995)*

A second meeting of legal advisers of National Red Cross and Red Crescent Societies, jointly organized by the ICRC and the International Federation of Red Cross and Red Crescent Societies, was held in Geneva on 6 and 7 March 1995.<sup>1</sup>

The advisers of some twenty National Societies, together with officials in charge of preparations for the 26th International Conference of the Red Cross and Red Crescent, devoted the first day of the meeting to examining the recommendations of the Intergovernmental Group of Experts for the Protection of War Victims which met on 23 to 27 January 1995.<sup>2</sup>

During this meeting which was chaired by Mr Yves Sandoz, Director of the ICRC's Department for Principles, Law and Relations with the Movement, the participants expressed satisfaction that the Movement's role not only as the custodian and promoter of international humanitarian law (IHL), but also as an adviser on the implementation of that law, had been reaffirmed. They also noted that the Group of Experts' eight recommendations allowed the Movement's components considerable scope for action and that it was up to them to sustain the States'

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<sup>1</sup> The first meeting of legal advisers of National Societies was held in Geneva on 12 and 13 September 1994. A summary of its work is to be found in the September-October 1994 issue, No. 302 of the *Review*, pp. 442-445.

<sup>2</sup> See *Review*, No. 304, January-February 1995, pp. 33-38.

efforts towards improved application of the law. In addition, the participants considered that action by the Movement need not be confined solely to the experts' recommendations. It could also undertake activities in spheres as yet inadequately explored, for example mandatory reporting systems on national measures for the implementation and dissemination of IHL.

From the discussions on the recommendations of the Group of Experts the following major points emerged:

- National Societies have an important role to play in the universal adoption of the instruments of IHL; they are fully entitled to advise their governments on the purpose and competence of the Fact-Finding Commission.
- The ICRC, with the help of the National Societies, the International Federation of Red Cross and Red Crescent Societies and academic institutions, must strengthen its capacity to provide advisory services to States in their efforts to implement and disseminate IHL. Such advice can be given only with the recipient's prior consent.
- As regards dissemination, the National Society experts considered that the ICRC could either become directly involved in promoting a better understanding of IHL among international organizations and UN bodies and agencies or urge them to develop such knowledge themselves. A major effort must in any case be made to train peace-keeping troops.
- The National Societies are the ICRC's obvious counterparts, and the support given to them by the Federation must be coordinated with the ICRC.
- With regard to the role of dissemination in preventing conflicts, the Movement's task should be to continue developing an approach based on the humanitarian values on which IHL is founded. It should seek the most suitable ways of making these values known in various parts of the globe and in different cultural contexts.
- The National Society experts reaffirmed the importance of national committees to facilitate and coordinate the implementation and dissemination of IHL. However, it was essential to ensure that the involvement of non-governmental organizations, whose working principles may be different from those of the Movement, did not cause governments to misunderstand the purpose of such committees and give rise to confusion.

- As depositary of the Geneva Conventions, the Swiss Government will organize periodic meetings of the States party to them to examine general problems of application of IHL. It is intended to hold the meetings alternately with the International Conference of the Red Cross and Red Crescent; they will deal exclusively with the application of the law. National Society experts specifically stressed the need for the holding of all these meetings to be coordinated.

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The second day was devoted to preparations for the 26th Conference, in particular proposals as to action the components of the Movement should take to ensure its success. The participants also reviewed the provisional agenda for the Conference and considered how the National Societies could become involved in preparations for it by mobilizing their members and approaching governments.

The provisional agenda for the Conference, as submitted by the ICRC and the Federation, contained the following main items:

(1) *Commission I*

- Report by the Swiss Government on the recommendations of the Intergovernmental Group of Experts for the Protection of War Victims.
- Protection of the civilian population during armed conflicts, and other topical issues.

(2) *Commission II*

- Principles and response in international humanitarian assistance and protection.
- Strengthening capacity to aid and protect the most vulnerable.

The experts put forward specific suggestions for an agenda which must simultaneously take into account humanitarian priorities and the interests of States. They especially emphasized how imperative it was for the Movement to present a united front in order to demonstrate that it can make a significant contribution to resolving humanitarian issues.

The chairman of the meeting endorsed their comments in his summing up, inviting National Societies to approach the Conference in a positive

and constructive manner and avoid giving States the impression that the Movement viewed the Conference as a venue for confrontation. It was essential that the Conference continue to be a major humanitarian forum where all the participants demonstrate their willingness to join together in defending the victims' interests.

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In a subsequent issue the *Review* will return to the preparations being made for the International Conference and in particular the agenda, which must be finalized by the Standing Commission of the Red Cross and Red Crescent when it meets on 1 and 2 May 1995.

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## **RUSSIAN EDITION OF THE INTERNATIONAL REVIEW OF THE RED CROSS**

On the 125th anniversary of the *International Review of the Red Cross*, the ICRC again reaffirms the principles of permanence, receptiveness and dissemination which it set several years ago for its official publication at the service of the International Red Cross and Red Crescent Movement.

At its meeting of 4 May 1995, the ICRC Executive Board decided that the *Review* should also be published in Russian.

The changes which have occurred in the USSR since the end of the 1980s have been accompanied by the emergence of new conflicts, with the result that this vast region has become a priority area for ICRC protection and assistance. It is also showing greater interest in the activities of the International Red Cross and Red Crescent Movement. Now more than ever our institution, which hails this new receptiveness, needs to adopt the appropriate means for effective prevention, dissemination and humanitarian diplomacy.

In a part of the world where the written word continues to be the most appreciated means of communication, our purpose in issuing the ICRC's official publication in Russian — a language spoken by more than 200 million people — is therefore to spread knowledge of international humanitarian law and the Movement's message and activities, especially within National Societies and government and academic circles. More particularly, it will serve to back up the ICRC's efforts in recent years, at university and secondary school levels, to produce dissemination material in Russian for users in the countries of the former USSR and in other regions where there is a widespread knowledge of the language.

The Russian edition of the *Review*, which will basically be identical to the other regular editions in Arabic, English, French and Spanish, can also foster the development of strong National Societies within the Commonwealth of Independent States. At the same time, it can help them to

strengthen their links with the ICRC, which hopes that this new edition will be well received and will prompt Russian-language institutions and Russian-speaking individuals to send in written contributions giving their thoughts and ideas on the activities of the Movement, the application of humanitarian law and current major humanitarian issues.

The November-December 1994 issue was the first to appear in Russian and, like the same issue in the other languages, was devoted to the 125th anniversary of the *Review*.

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Geneva, 31 May 1995

**CONVOCATION  
to the 26th International Conference  
of the Red Cross and Red Crescent**

*Geneva (Switzerland), 3-7 December 1995*

The Standing Commission of the Red Cross and Red Crescent mandated the International Committee of the Red Cross and the International Federation of Red Cross and Red Crescent Societies to organize the 26th International Conference of the Red Cross and Red Crescent. It will be held in Geneva (Switzerland)

**from 3 to 7 December 1995.**

This Conference will be preceded by the 36th Session of the Executive Council and the 10th Session of the General Assembly of the International Federation of Red Cross and Red Crescent Societies, the Council of Delegates of the International Red Cross and Red Crescent Movement and various other meetings of particular interest to the Movement.

This is the convocation for the members of the International Conference which, pursuant to Article 9 of the Statutes of the Movement, are:

- duly recognized National Red Cross and Red Crescent Societies,
- the International Committee of the Red Cross,
- the International Federation of Red Cross and Red Crescent Societies,
- the States parties to the Geneva Conventions.

Pursuant to Rule 5 of the Rules of Procedure of the Movement, this convocation is also being sent to observers to inform them that this Conference is going to be held.

Please find attached:

- the programme of the Conference,
- the provisional annotated agenda of the Conference,
- the registration and hotel registration form (to be duly filled in and returned within the indicated deadline), the list of hotel prices, a map of Geneva,
- a brochure on the 26th International Conference.

Rule 6 (para. 2) of the Rules of Procedure of the Movement stipulates "observations, amendments or additions to the provisional agenda must be received by the Standing Commission at least sixty days before the opening of the Conference...". All comments to this effect must thus be sent to the following address by 3 October 1995:

**Secretariat of the Standing Commission  
of the Red Cross and Red Crescent  
C.P. 372  
1211 Geneva 19 (Switzerland)**

Lastly, the Standing Commission has decided to nominate Ambassador Jean-Daniel Biéler, who has been put at its disposal by the Swiss Government, as Commissioner responsible for assisting the International Committee and the International Federation with respect to preparations for the Conference.

MARIO VILLARROEL LANDER  
*President*

*International Federation  
of Red Cross and Red Crescent-Societies*

CORNELIO SOMMARUGA  
*President*  
*International Committee  
of the Red Cross*

# 26th International Conference of the Red Cross and Red Crescent

*Geneva, 3-7 December 1995*

## PROVISIONAL ANNOTATED AGENDA

### OPENING CEREMONY

### FIRST PLENARY MEETING

#### 1. Election of the Chairman, Vice-Chairmen, Secretary-General and two Assistant Secretaries General of the Conference

In conformity with Rule 15 of the Rules of Procedure, the first plenary meeting will elect the officers of the Conference on the proposal of the Council of Delegates.

#### 2. Humanitarian challenges on the eve of the twenty-first century:

2.1 Keynote address by the President of the International Committee of the Red Cross

2.2 Keynote address by the President of the International Federation of Red Cross and Red Crescent Societies

#### 3. Appointment of the Conference Commissions and adoption of their respective agendas:

*Commission I: War victims and respect for international  
humanitarian law*

*Commission II: Humanitarian values and response to crises*

### MEETINGS OF THE COMMISSIONS

#### A. COMMISSION I: *War victims and respect for international humanitarian law*

#### 1. Election of the Chairman, the Vice-Chairmen, the rapporteurs and the members of the Drafting Committee

## 2. International humanitarian law: from law to action - Report on the follow-up to the International Conference for the Protection of War Victims

On the initiative of the Swiss government, an International Conference for the Protection of War Victims was held from 30 August to 1 September 1993. The States present at the Conference expressed their refusal to accept the inevitability of serious and large-scale violations of international humanitarian law, which cause suffering, destruction, destitution and death, especially among the civilian population.

At the request of the Conference, the Swiss government then brought together an Intergovernmental Group of Experts open to all States. The group adopted by consensus a series of practical recommendations aimed at promoting full respect for international humanitarian law. These recommendations, which were forwarded to the States, will be submitted to the International Conference by the Chairman of the Group of Experts on behalf of the Swiss government. A supplementary document will be provided, indicating ways in which the various components of the International Red Cross and Red Crescent Movement could contribute effectively to implementing the recommendations.

A draft resolution concerning the recommendations will also be submitted to the Conference. It will include proposals for action on the recommendations that require specific measures of implementation and application.

## 3. Protection of the civilian population in wartime

The most acute problems that have arisen in recent conflicts with regard to the protection of the civilian population concern above all women and children. Countless acts of violence, including rape, have been committed against women. These acts must be considered as war crimes in accordance with international humanitarian law. Awareness of the situation of women in war must be heightened so that measures can be adopted, in addition to the general provisions which already exist for the protection of civilians, to increase protection specifically for women. Children are also a highly vulnerable group in armed conflicts. Often left to their own devices, many are recruited or volunteer to become soldiers. Measures must also be adopted in this area, including ways of providing children with more support and facilitating their reintegration in society.

Among the most serious problems arising in connection with armed conflict and the protection of the environment are the use of starvation

and the prevention of access to, or the contamination of, water supplies as methods of warfare. The widespread use of landmines, which cause untold suffering among the civilian population, is another serious problem. Special attention should therefore be focused on examining the results of the Review Conference of the 1980 United Nations Weapons Convention and on discussing various measures that could be taken to fight this scourge.

A report will be submitted that includes an overview of each of these problems, a brief reminder of the applicable law in force, a summary of the activities of the various components of the International Red Cross and Red Crescent Movement and proposals aimed at increasing the protection afforded war victims.

A draft resolution containing these proposals, in particular, will be submitted to the International Conference.

#### 4. Any other business

##### *B. COMMISSION II: Humanitarian values and response to crises*

1. Election of the Chairman, the Vice-Chairmen, the rapporteurs and the members of the Drafting Committee
2. Principles of international humanitarian assistance and protection

The International Red Cross and Red Crescent Movement, by addressing the needs of the most vulnerable groups worldwide, advocates and acts upon its founding values and principles. This agenda item concentrates on various aspects of humanitarian assistance, in particular the Movement's response to the plight of refugees and internally displaced persons, and the ethical principles and professional standards which the Movement believes must be applied during humanitarian assistance operations.

A background document on recent international developments affecting humanitarian assistance will, *inter alia*, examine the Movement's concern with preventing and mitigating suffering during humanitarian crises and with improving both the efficiency and effectiveness of humanitarian assistance and protection. The document will also explore the relationship between, on the one hand, appropriate diplomatic and political action by States and international institutions and, on the other hand, the need to preserve a neutral and impartial environment in which humanitarian action can take place.

A draft resolution will include a number of recommendations specifying the Movement's expectations of governments, in particular with a view to preserving the independence of its action. Endorsement will be sought for the newly revised "Principles and Rules for Red Cross and Red Crescent Disaster Relief" and for the "Code of Conduct for the International Red Cross and Red Crescent Movement and NGOs in Disaster Relief".

### **3. Strengthening the Movement's capacity to assist and protect the most vulnerable groups**

At the national and local levels, commitment to the Movement's principles and values is demonstrated and advocated in the day-to-day programmes of the National Red Cross and Red Crescent Societies on behalf of the most vulnerable groups in their countries. To function as effective, independent auxiliaries to their governments in emergency situations and in providing community services, the National Societies must have strong and clear structures and mandates, and the necessary resources.

A background document will outline priorities for the institutional and operational development of National Societies. These include strengthening global and regional networking, upholding and advocating the characteristics of a well-functioning National Society and reviewing the statutes of National Societies with a view to preserving their integrity.

A draft resolution will, *inter alia*, call on governments to confirm the mandate of the National Societies as auxiliaries able to fulfil their humanitarian mission within their communities in accordance with the Movement's principles and values. It will also urge governments to renew their commitment to supporting National Society development, structures, services and disaster preparedness activities.

### **4. Any other business**

## **SECOND AND SUBSEQUENT PLENARY MEETINGS**

### **1. Election of the members of the Standing Commission**

The Standing Commission of the Red Cross and Red Crescent will comprise nine members, namely:

- (a) five members of different National Societies, each elected in a personal capacity;

- (b) two representatives of the International Committee of the Red Cross, one of whom shall be the President;
- (c) two representatives of the International Federation of Red Cross and Red Crescent Societies, one of whom shall be the President.

In accordance with Rule 21 of the Movement's Rules of Procedure, nominations for the Standing Commission must be delivered in *closed* envelopes, with the *curriculum vitae* of each candidate, to the Chairman of the Bureau of the International Conference, *48 hours* before the opening of the meeting in which the election is to take place. The proposals for candidates should therefore reach the Chairman of the Bureau, who is also the Chairman of the Conference, by *5 December 1995* at 9 a.m.

The *curriculum vitae* of each candidate must be circulated at least *24 hours* before that meeting and should therefore be made available by *6 December 1995* at 9 a.m.

It is to be noted that *personal qualities* and the *principle of fair geographical distribution* should be taken into account.

## **2. Report of Commission I and adoption of resolutions**

## **3. Report of Commission II and adoption of resolutions**

## **4. Any other business**

Amendment to the Statutes and the Rules of Procedure of the Movement

In 1991, the 8th Session of the General Assembly of the (then) League of Red Cross and Red Crescent Societies decided that the new name of the organization should be the "International Federation of Red Cross and Red Crescent Societies". With a view to amending the Statutes and the Rules of Procedure of the Movement to include the new name of the organization, all proposals regarding the change of name were circulated to all the members of the 26th International Conference, which was due to, but did not, take place in Budapest in 1991. Consequently, the International Federation proposes that the 26th International Conference amend the Statutes and the Rules of Procedure of the Movement in order to bring them into harmony with the decision of the International Federation's General Assembly referred to above (see Annex).

## 5. Place and date of the 27th International Conference

NOTE:

Owing to the limited time available for discussion in the Commissions, written reports will be submitted to the participants under item (4) *Any other business* on the following subjects:

- Report of the Chairman of the Standing Commission;
- Report of the Council of Delegates;
- Report of the Joint Commission for the Empress Shôken Fund;
- Follow-up to resolutions of the 25th International Conference.

Geneva, 31 May 1995

## ANNEX

### Amendment to the Statutes and the Rules of Procedure of the Movement

In 1991, the 8th Session of the General Assembly of the (then) League of Red Cross and Red Crescent Societies decided that the new name of the organization should be the "International Federation of Red Cross and Red Crescent Societies". With a view to amending the Statutes and the Rules of Procedure of the Movement to include the new name of the organization, all proposals regarding the change of name were circulated to all the members of the 26th International Conference, which was due to, but did not, take place in Budapest in 1991. Consequently, the International Federation proposes that the 26th International Conference amend the Statutes and the Rules of Procedure of the Movement in order to bring them into harmony with the decision of the International Federation's General Assembly referred to above.

Amendment proposed by the International Federation of Red Cross and Red Crescent Societies relating to the change of the name of the League

#### 1. Preamble

*Present text:*

"The International Conference of the Red Cross and Red Crescent,

*Proclaims* that the National Red Cross and Red Crescent Societies, the International Committee of the Red Cross and the League of Red Cross and Red Crescent Societies..."

*Proposed text:*

"The International Conference of the Red Cross and Red Crescent,

*Proclaims* that the National Red Cross and Red Crescent Societies, the International Committee of the Red Cross and the International Federation of Red Cross and Red Crescent Societies..."

## 2. General provisions

### Article 1: Definition

*Present text:*

"1. The International Red Cross and Red Crescent Movement (hereinafter called "the Movement") is composed of the National Red Cross and Red Crescent Societies recognized in accordance with Article 4 (hereinafter called "National Societies"), of the International Committee of the Red Cross (hereinafter called "the International Committee") and of the League of Red Cross and Red Crescent Societies (hereinafter called "the League")."

*Proposed text:*

"1. The International Red Cross and Red Crescent Movement (hereinafter called "the Movement") is composed of the National Red Cross and Red Crescent Societies recognized in accordance with Article 4 (hereinafter called "National Societies"), of the International Committee of the Red Cross (hereinafter called "the International Committee") and of the International Federation of Red Cross and Red Crescent Societies (hereinafter called "the Federation")."

## 3. Components of the Movement

*Present text:*

### "Article 6: The League of Red Cross and Red Crescent Societies

1. The League is the International Federation of the National Red Cross and Red Crescent Societies. It acts under its own Constitution with all rights and obligations of a corporate body with a legal personality.
2. The League is..."

*Proposed text:*

**"Article 6: The International Federation of Red Cross and Red Crescent Societies**

1. The International Federation of Red Cross and Red Crescent Societies comprises the National Red Cross and Red Crescent Societies. It acts...
2. The Federation is..."  
· (rest unchanged)

All relevant articles of the Statutes and of the Rules of Procedure of the International Red Cross and Red Crescent Movement shall be amended accordingly.

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## **WORLD RED CROSS AND RED CRESCENT DAY 1995**

JOINT MESSAGE OF THE INTERNATIONAL FEDERATION  
OF RED CROSS AND RED CRESCENT SOCIETIES  
AND OF THE INTERNATIONAL COMMITTEE OF THE RED CROSS

### ***DIGNITY FOR ALL: RESPECT FOR WOMEN***

Women, whether volunteers, staff or victims, whether helping or being helped, play a decisive role in our International Red Cross and Red Crescent Movement.

Disasters strike, conflicts erupt, leaving in their wake death, destruction, exile and despair. Yet from the origins of the Movement women have been at the forefront in caring for those in need. Henry Dunant was lavish in his praise for the local women who, through their concern for and self-sacrificing, untiring assistance to the soldiers wounded during the battle of Solferino, helped him to develop his humanitarian vision. As nurses, leaders and delegates, women have made a remarkable contribution to the Movement's efforts to uphold human dignity. Dedication to the noble task of helping others is a feminine characteristic; indeed, every woman is a mother at heart.

Unfortunately, millions of women have borne the brunt of conflict and disaster. When forced to abandon the rubble to which an earthquake or the shelling of vulnerable cities has reduced their homes, women are usually the ones who take the lead in rebuilding their shattered families by restoring the domestic routines that are so important to daily life. Theirs is a solitary and seemingly thankless struggle to maintain their dignity and that of their families when they are widowed by the conflict or their menfolk go off to fight for an ideal. Their dignity lies in the courage with which they overcome the immensity of their loss. Such dignity and courage are what make them the heroines of today's world.

A ruined house can be rebuilt and food supplies can be replaced, but an individual's physical and psychological integrity is sacred. Nature is often unpredictable, but so is man, despite his ability to reason. We make laws to protect ourselves, but sadly we do not obey them, even when our very existence and self-respect are at stake. The practice of rape, for example, which was associated with warfare in bygone days, is still a gruesome reality today, yet such acts are universally outlawed. What greater humiliation can a woman suffer than to be the victim of society's most degrading crime, when society itself discourages her from denouncing it? As Red Cross or Red Crescent members, and indeed as individuals, we must refuse to tolerate such blatant disrespect for women's dignity and strive to ensure that such behaviour becomes a thing of the past. It is the duty of all mankind firmly to condemn and punish such an odious and monstrous crime.

The Movement is highlighting the theme "Respect for women" this 8 May to support 20 years of international efforts to promote women's rights. In keeping with our tradition of helping the most vulnerable, as women frequently are in times of emergency, each one of us should do everything possible to uphold both respect for women and women's self-respect.

Let us all strive to defend the rights of women as individuals who have a crucial role to play. There has been enough mere talk about equality; now is the time to make it a reality. This is a humanitarian obligation and, as such, must become a guiding principle for our Movement. In the name of dignity for all, let us promote respect for women.

MARIO ENRIQUE VILLARROEL LANDER

*President*

*International Federation of Red Cross  
and Red Crescent Societies*

CORNELIO SOMMARUGA

*President*

*International Committee  
of the Red Cross*

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### *DISSEMINATION IN ACADEMIC CIRCLES*

## The Jean Pictet Competition

by Christophe Lanord and Michel Deyra

The Jean Pietet International Humanitarian Law Competition was first held in 1989 on the initiative of the French Institute of Humanitarian Law in Clermont-Ferrand. Given its name in honour of the author of the *Principles of International Humanitarian Law* and the *Commentaries* on the Geneva Conventions and their Additional Protocols, and with his explicit permission, the Jean Pictet Competition continues in the tradition of the major international competitions for law students (Jessup, Rousseau, Cassin, etc.). This French-language competition has attracted more than 500 participants since its inception: universities in Albania, Argentina, Belgium, Bulgaria, Canada, Colombia, France, Germany, Mali, Romania, Switzerland, Tunisia and the United Kingdom have sent representatives of more than 30 different nationalities. The only international competition in a branch of public international law that is too often neglected by academics, its method and objectives endow it with a number of special features.

### **1. The method**

The Jean Pictet Competition enables graduate students of law to become better acquainted with international humanitarian law, using simulated events and role-playing based on fictitious situations of armed conflict. Teams of four members must pit their legal knowledge against one another's and test their ability to find solutions to problems in three phases: the qualifying heats (two days), semi-finals and finals.

During the first two days, all the teams are invited to work on four aspects of a case study and to submit their solutions to four juries. In so

doing, the students have to take on the identities of advisers to ministries (defence, justice, etc.), lawyers, jurists, delegates of the ICRC or of a National Red Cross or Red Crescent Society, or rapporteurs to an interministerial committee, a court, military officers, an international or non-governmental organization, etc. The participants are given a different duty for each test, and are thus able to grasp various aspects of humanitarian law.

After the first two days, the six best teams follow up the case study. A single jury chooses the teams that will go through to the finals. Subjected for the last time to eight hours of preparation, the teams now come face to face. The finals jury selects the winning team, whose members are awarded the first prize: a two-week research fellowship at the Henry Dunant Institute in Geneva. The best speaker is awarded the Gilbert Apollis Prize.

The juries are made up of eminent experts in international law: in 1995 alone, such prominent figures as Mohammed Bedjaoui, President of the International Court of Justice; Anne Petitpierre, member of the ICRC Executive Board; Olivier Russbach, President of the French association *International Law 90*; and Professors Katia Boustany, Pierre Bringuier, Jean-Pierre Quéneudec, William Schabbas, Brigitte Stern and Dominique Turpin were members of the juries. They played their roles consummately, which meant, where necessary, pretending to completely misunderstand the candidates' explanations, or refusing to accept them, simply because the role played by the jury required them to adopt that attitude.

A last special feature of the Jean Pictet Competition is that it is held in a different place each year: the first session was in Clermont-Ferrand (1989). That was followed by sessions in Montpellier (1990), Geneva (1991), Brussels (1992), Clermont-Ferrand (1993), Montreal and Quebec (1994). In 1995, it was the French Red Cross that organized the seventh session in Paris, with great success, following in the tradition of four successive years of involvement by National Red Cross Societies.

The itinerant nature of the competition means that a local organizing committee can be relied on each year to deal with various practical matters (accommodation, meals, transport, reservation of the work rooms, and so forth). The academic aspect of the competition is dealt with by the Committee for the Jean Pictet Competition (CCJP), an association that brings together, in addition to the co-authors of the present text, jurists, lawyers and teachers of various nationalities, many of whom have ties with the French Institute of Humanitarian Law and the Quebec Institute of Humanitarian Law. It is the CCJP that supervises the competition, selecting the host body, devising the case studies and arranging the composition of the juries.

## 2. The objectives

The Jean Pictet Competition was created primarily to remedy the shortcomings of various university systems, which too often neglect international humanitarian law. It is now possible to promote the study and dissemination of this law by contacting several hundred universities across the world each year to encourage them to register for the competition; by changing the country for each new session, thus attracting the attention of different media and academics each year; and by arranging, in conjunction with the competition, university seminars, lectures and discussions, workshops, and exhibitions on international humanitarian law.

Dissemination is also facilitated by the method peculiar to the Jean Pictet Competition: unlike the other law competitions, no written dissertation is required; furthermore, the case study is revealed to the teams only on the day of the test. This unknown factor obliges the teams to prepare themselves not only in the field of international humanitarian law as a whole, but also in those of international penal law, international human rights law, international refugee law, United Nations law, etc. Thus, in the weeks leading up to the competition, the participants cannot afford to neglect any of these areas.

But over and above the traditional aim of spreading knowledge of the given subject, the real objective of the competition is to convey the reality of international law. The idea is to avoid giving the students too theoretical a view of humanitarian law, but instead to show its limits and constraints. This training work also implies a refusal to take the easy way out, which would be to settle for the media-style view of humanitarian law, one that is unfortunately too common nowadays and is often reflected in statements made by politicians. Not to despise humanitarian law, not to idealize it, but to know its true value: that is the attitude that the organizers expect of the participants.

That is why the Jean Pictet Competition is different from the other international law competitions. Like humanitarian law itself, it does not deal mainly with legal disputes or judicial matters, but with practice and, indeed, with real-life situations.

During the 1994 session, for example, the candidates played the role of ICRC delegates making a first visit to the authorities of a State not recognized by the international community. Faced with a military junta that was more interested in receiving aid than in possible protection activities, the candidates had to devise a whole negotiation strategy and couch their legal arguments in more general terms, with the aim of getting

the other side to accept those arguments. The candidates had to try to persuade the members of the junta to comply with humanitarian law, while knowing that they had expressed (very clearly) their refusal to listen to legal explanations. In such a case, which recalls certain passages in *Warrior without weapons*, what should be done?

To be able to adopt the appropriate behaviour, legal knowledge is essential. Without it, nothing is possible — but legal knowledge alone is not sufficient. Imagination and a lively mind must supplement academic knowledge. And, each year, the organizers meet, among the dozens of very able students, outstanding individuals; not just humanitarian law experts, but also students whose human qualities are on a par with their humanitarian commitment.

For many students, the competition is a complete break with the university world and very often constitutes their first confrontation with the reality of international law. Many students admit to having suffered a genuine "culture shock" when they discovered aspects of which they had previously been unaware. In particular, exposure to the actual consequences of a legal opinion is often a new experience: the realization that a particular opinion, although perfectly well-founded, can have far-reaching consequences for thousands of people must prompt reflection on the ethical aspects of the opinion. The responsibility of the jurist is one of the points on which the organizers of the competition want to prompt participants to reflect.

Another objective of the competition is to foster student encounters with other cultures. First, the case studies lend themselves to such discovery. For a week, the participants live through the tragic events of a fictitious region, since the various tests in a given year all refer to a single situation: the "Underwind Islands", "Seraikraia" or "Saffividistan", to cite only the three last years. The candidates must therefore steep themselves in the local culture and the history of these fictitious regions, voluminous descriptions of which are given to them a few weeks before the tests.

The diversity of the students' nationalities also encourages cultural exchanges. The fact that they have pored over the same problems for a week, have experienced the same joys and the same pains, and have participated in the same unique experience as part of their university training creates very strong links between the participants, links that are the stronger for often being built up across frontiers.

Finally — and it is hardly surprising — vocations are often born of participation in the competition. Many former participants today occupy responsible posts in the humanitarian field, both inside and outside the International Red Cross and Red Crescent Movement, and also in public

administration, and legal practices. If any of the 500 former participants is one day confronted with questions linked to humanitarian law or to the Movement, it is very likely that the earlier exposure to these issues will enable him or her to defend the interests of humanity all the better. And that, when all is said and done, is surely the ultimate aim of dissemination.

### 3. The eighth session of the competition: Geneva, March 1996

The next session of the competition will take place in Geneva from 2 to 10 March 1996. There will be two major innovations compared with previous years. First, the number of teams will be limited to twelve with, in principle, a maximum of three teams from the same country. The teams will be selected not only for their competence in humanitarian law, as before, but also for their motivation and the quality of their humanitarian commitment. And second, participants will be given two days training prior to the competition. The training will not relate to humanitarian law itself, since participants are supposed to have an in-depth knowledge of international law before they even reach the venue of the competition. Topics of current importance, including developments in humanitarian law since the 26th International Conference of the Red Cross and Red Crescent, will be covered by experts. Similarly, people who actually work with humanitarian law will explain their views on the subject: for example, a legal adviser to the armed forces, an ICRC field delegate, and a legal adviser of a National Red Cross or Red Crescent Society. Finally, workshops will be run that are intended to awaken candidates to the realities of humanitarian action and to improve the way they present their cases and play their roles.

Information on the eighth session of the competition can be obtained from the following addresses:

Mr Michel Deyra  
25 rue des Garnaudes  
63400 Chamalières  
France  
Fax: ++33 73 34 36 67

Jean Pictet Competition 1996  
P.O. Box 71  
1211 Geneva 29  
Switzerland  
Tel: ++41 22 735 5134  
Fax: ++41 22 735 5162

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## COMPETITION ROLL OF HONOUR 1989-1995

*(the winner is underlined)*

- 1989 (Clermont-Ferrand): Free University of Brussels; Fribourg University  
Gilbert Apollis Prize: Christian Linsi (Fribourg University)
- 1990 (Montpellier): Aix-Marseille University; Neuchâtel University  
Gilbert Apollis Prize: Olivier Raluy (Clermont-Ferrand University)
- 1991 (Geneva): Quebec Bar, Montreal Centre; Free University of Brussels  
Gilbert Apollis Prize: Valérie Jochmans (Free University of Brussels)
- 1992 (Brussels): Quebec Bar, Montreal Centre; Aix-en-Provence University  
Gilbert Apollis Prize: Daphné Cousineau (Quebec Bar, Montreal Centre)
- 1993 (Clermont-Ferrand): University of Essex; Montreal University  
Gilbert Apollis Prize: Catherine Bohémier (Montreal University)
- 1994 (Montreal-Quebec): Saint-Jean Royal Military College (Canada); Paris I University (Panthéon-Sorbonne)  
Gilbert Apollis Prize: Stéphane Dubreuil (Sherbrooke University)
- 1995 (Paris) Graduate Institute of International Studies (Geneva); University of Essex  
Gilbert Apollis Prize: Alexandre Dalmau (University of Quebec in Montreal)

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# XIXth Round Table on Current Problems of International Humanitarian Law

*(San Remo, 29 August - 2 September 1994)*

*CONFLICT PREVENTION — THE HUMANITARIAN PERSPECTIVE*

## General Conclusions

The XIXth Round Table of the International Institute of Humanitarian Law on Current Problems of International Humanitarian Law in San Remo was held from 29 August to 2 September 1994 on the topic of "Conflict prevention — the humanitarian perspective".

The Round Table was opened by the President of the Institute, Ambassador Hector Gros Espiell. Messages were sent by the President of the Italian Republic, Mr Oscar Luigi Scalfaro, by the Secretary-General of the United Nations, Mr Boutros Boutros Ghali, and by the United Nations High Commissioner for Refugees, Mrs Sadako Ogata.

The participants were welcomed by the Mayor of San Remo, Mr David Oddo, and the opening address was made by the President of the International Committee of the Red Cross, Mr Cornelio Sommaruga. In the course of the Round Table discussions, statements were also made by the United Nations Under-Secretary-General and Director General of the United Nations Office at Geneva, Mr Vladimir Petrovsky, the United Nations High Commissioner for Human Rights, Mr José Ayala Lasso, the Director General of the International Organization for Migration (IOM), Mr. James Purcell, and the Secretary-General of the International Federation of Red Cross and Red Crescent Societies, Mr George Weber. Professor Jovica Patrnogic, Honorary President of the Institute, gave the introductory remarks.

Much of the substantive work of the Round Table was conducted in panels under the direction of moderators highly qualified in their respective

tive fields, seconded by assistants. The Coordinator of Panels was Mr. Ivor Jackson.

The subject of the Round Table was discussed against the background of recent turbulent and tragic events, some of which had resulted from changes in the political landscape due to the end of the Cold War and of the previous bipolarity of world politics. The following conclusions were reached:

1. In recent years, a number of conflict situations have arisen in many parts of the world and have been the cause of widespread and prolonged human suffering. Those afflicted included innocent victims of disregard for or violations of the principles and rules of international humanitarian law and fundamental human rights and people obliged to leave their usual place of residence, often under cruel and inhuman conditions, in order to seek refuge elsewhere, either within their own country or beyond its borders. This tragic human suffering is in itself a reason to focus increasing attention on the problem of conflict prevention and to approach it from the humanitarian point of view.

2. There are two basic considerations in addressing the problem in this way:

Firstly, when there is a danger of conflict, the possible human consequences should always be borne in mind by the parties concerned. There can be little doubt that if they had been fully aware of the magnitude of those consequences, this would probably have had a restraining effect on the emergence of the conflict itself;

Secondly, once a conflict has arisen, it is essential to ensure that humanitarian assistance is provided effectively and under optimum conditions. Continuing and prolonged human suffering necessarily serves to aggravate a conflict situation, whereas humanitarian assistance, by alleviating human suffering, thereby helps to prevent the situation from deteriorating still further. The same applies to the need for observance, during a conflict, of the principles of international humanitarian law, international refugee law and international human rights law.

3. Action with a view to *conflict prevention* may be short-term or long-term; whereas short-term action might produce more immediate results, it may not address the underlying causes of a conflict involved because of the "emergency" element and may, in some cases, only have the effect of postponing a real solution. Long-term action, on the other hand, may be more effective by addressing the root causes of the situation.

4. Recent and current conflict situations have been accompanied by an increase in the role assumed by the United Nations in the humanitarian

sphere. The practices adopted, e.g. the use of armed force, to ensure the delivery of humanitarian assistance are new elements that may well have an influence on the application of international humanitarian law and its possible further evolution.

5. It was noted with satisfaction that the international community had already acquired experience in various types of preventive action, including a series of specific mechanisms which should be further developed.

6. Conflict situations may result from many different causes which, in certain cases, may coincide, e.g. gross violations of human rights, in particular the rights of minorities or ethnic groups, and problems of frontiers, the arms trade, migration and development. With regard to the latter, it was considered that the fundamental importance of development had to some extent been overlooked, since the principal attention of the international community had recently been focused on current situations of open conflict. *Promotion of development*, however, deserves much greater attention as a vital element in long-term conflict prevention. In this connection, due consideration should be given to the need to ensure that effective action is taken by the international monetary and development institutions concerned, in accordance with their respective terms of reference.

7. In order to achieve meaningful results with respect to prevention, it is essential that those responsible for international action have the necessary political will to take appropriate measures. It is also desirable to obtain the support of the parties directly involved in a conflict situation. In addition, it is essential for preventive action that the necessary financial resources be made available by governments.

8. Conflict situations are often the cause of large-scale *migratory flows*. Such flows, moreover, may create new conflict situations. It is therefore of the greatest importance to ensure that uncontrolled or excessive migratory movements are avoided, or at least reduced, with due regard for the principles of international refugee and human rights law.

9. Minority problems are a major cause of contemporary conflicts and should therefore not remain unresolved. In seeking solutions, it would be appropriate *inter alia* to examine the possibilities of preparing an international instrument on minority rights at the regional level, especially in Europe.

10. The importance of the "*early warning*" mechanism as a step towards preventive diplomacy was fully recognized. It was also considered important to keep situations likely to lead to a conflict under constant

and ongoing review before they reached a degree of seriousness necessitating recourse to the early warning mechanism. The early warning mechanism should be reinforced by greater emphasis on fact-finding, also at the field level where non-governmental organizations have an important role to play. Some proposed that this mechanism of conflict prevention could be more efficient through the establishment of an early warning "clearing house" or "agency" to collect, collate and transmit relevant information to all UN organs concerned and, as appropriate, to the media. It was recalled that some situations likely to lead to a conflict may have existed for a long period of time, and it would be appropriate to identify them even before having recourse to the early warning mechanism.

11. It was essential that early warning should not be limited to obtaining relevant information, but should also imply a willingness on the part of governments and organizations concerned to take appropriate preventive measures, should these prove necessary in the light of the information obtained, so that early warning is translated into early action.

12. An important issue is the degree of seriousness which a situation must have attained to justify action to avert conflict. It was considered that there must not necessarily be large-scale violations of human rights or that the situation should have direct trans-frontier consequences, but that it should nevertheless be of such a nature as to attract international concern.

13. It was noted with satisfaction that the concept of "*preventive diplomacy*" had now been accepted, and had also been recognized as a potentially effective tool for action. There was, however, a need to render preventive diplomacy more effective by ensuring that existing arrangements for it are fully utilized in all potential or actual conflict situations, and that action taken under these arrangements is fully coordinated. It was recognized that uncoordinated or divergent action can seriously undermine the effectiveness of preventive diplomacy.

14. It was considered that the mediatory role of the United Nations Secretary-General should be given full support and reaffirmed by General Assembly resolutions. Moreover, the relevant intergovernmental bodies and organs, e.g. UNHCR, UNICEF and the United Nations Coordinator for Humanitarian Affairs, might also be in a position to exercise a mediatory role, a possibility which should be resorted to whenever appropriate in situations calling for mediatory preventive action.

15. In various recent conflict situations, recourse had been had to enforcement measures under Chapter VII of the United Nations Charter,

and it was recognized that such measures can, under certain circumstances, constitute appropriate preventive action. It was considered that such measures could be rendered more effective through the establishment of a permanent United Nations Emergency Force as suggested in *An Agenda for Peace* submitted by the Secretary-General and by a revitalization of the Military Staff Committee provided for in Chapter VII of the United Nations Charter.

16. There is nevertheless some doubt as to whether enforcement measures under Chapter VII constitute appropriate preventive action in all cases, more especially in view of the political element which could, under certain circumstances, constitute an impediment to conflict resolution. Consideration should therefore be given to the more basic need to establish an open and constructive dialogue with regard to potential or existing conflict situations, including their humanitarian aspects. These concerns should, as far as possible, be taken into account by the Security Council, and enforcement measures under Chapter VII, whether or not involving the use of force, should always respect generally accepted humanitarian standards as defined by international humanitarian law and human rights law.

17. It was recognized that *peace-keeping* and *peace-building* efforts undertaken by the United Nations or by regional organizations may be of importance as preventive action. When such action is undertaken, however, due regard should be had to the humanitarian aspects of conflict prevention. It should, moreover, be ensured that peace-keeping efforts, through their objective and impartial character, are designed to avoid a further deterioration of a conflict situation and contribute to a lasting solution. Peace-building efforts should address the causes of a conflict situation in a comprehensive manner so as to bring about solutions of a basic and lasting nature.

18. In view of the large number of players normally involved in a potential or actual conflict situation, the effectiveness of any preventive effort must necessarily depend upon appropriate *coordination* between them. On the other hand, the effectiveness of such efforts could be seriously undermined through uncoordinated action. It was therefore considered that appropriate coordination and harmonization mechanisms should be established at the universal level, e.g. by reinforcing the powers and the authority of the United Nations Department of Humanitarian Affairs (DHA) established pursuant to General Assembly resolution 46/182 of 19 December 1991. Appropriate coordination arrangements should also be made at the local level between the organizations concerned and

agencies represented in a country or area where a potential or actual conflict situation exists.

19. *Disarmament* can be a very important factor in preventing conflicts or reducing their effects. In spite of certain recent encouraging developments in this area, the overall results have not been satisfactory. Sustained and intensified efforts are therefore required. Nuclear and biological weapons need to be fully regulated. Special mention was also made of the need to deal with the problem of landmines and to promote wider acceptance of international instruments relating to this matter.

20. Particular emphasis was placed on the role which can and should be played by *regional organizations* in conflict prevention, as a complement to that performed by the United Nations at the universal level. It was recognized that with their knowledge of, and concern for, the political problems existing in their respective areas, regional organizations may be in a particularly favourable position to exercise a mediatory function. They may also be able to mobilize the requisite political will to resolve a potential or actual conflict. Finally, they might be able to generate the necessary solidarity to promote solutions for potential or actual conflict situations arising in other areas, and in any event to co-ordinate the provision of humanitarian assistance aimed *inter alia* at mitigating the effects of a conflict situation. Such action by regional organizations should, of course, be in conformity with Chapter VIII of the United Nations Charter.

21. It was considered that *non-governmental organizations* can frequently play a major part in conflict prevention. They may, for example, be able to facilitate preventive diplomacy by their contribution to fact-finding and early warning, and through the mediatory function which they may be able to exercise in certain cases. In this context, the role of National Red Cross and Red Crescent Societies in conflict prevention, both before and during the conflict and in the post-conflict phase, was particularly stressed and it was considered that National Societies should adopt a more activist approach as regards both long-term and short-term objectives.

22. Humanitarian action to mitigate human suffering resulting from conflict situations has a preventive character in so far as it serves to avoid any further deterioration. In this connection, it was noted with satisfaction that humanitarian issues had now come to the forefront of public attention throughout the world. It was considered that *humanitarian assistance* should now be recognized as a major factor in the area of prevention. It was, moreover, deemed essential that humanitarian assistance be provided

under optimum conditions in complete accordance with the three principles which should govern all humanitarian action, i.e. humanity, impartiality and neutrality. It was of particular importance that in all conflict situations humanitarian action be kept clearly distinct from political and military action.

23. Efforts should be made to develop the *right* under international law of innocent victims *to receive* assistance. Such efforts appeared to be justified by more recent practice, and the "Guiding Principles on the Right to Humanitarian Assistance", adopted by the Board of the Institute in April 1993, can provide an appropriate basis for further promotional efforts in this area. These Guiding Principles have been greatly welcomed by a number of institutions concerned and could appropriately be drawn to the attention of the United Nations Commission on Human Rights and the International Red Cross and Red Crescent Movement.

24. The right of the international community to concern itself *with human* rights situations has now been generally accepted. Moreover, efforts with a view to prevention can be successful only by ensuring full respect for and effective implementation of international human rights law, international humanitarian law and international refugee law. On the other hand, failure to respect these different branches of international law could well result in a further deterioration of a conflict situation. It was therefore necessary to promote observance through effective action by the relevant international bodies. These include the ICRC, UNHCR, the United Nations human rights mechanisms and intergovernmental and non-governmental organizations which, in the course of their activities, are confronted with violations of these branches of international law. Among the United Nations human right mechanisms, particular emphasis was placed on the newly created post of a United Nations High Commissioner for Human Rights. The first actions undertaken by this highly important official in the United Nations system, which were aimed at protecting endangered human rights and thereby preventing possible conflicts, notably in Burundi, Guatemala and Rwanda, were particularly commended since they reflect a significant development of the role of the United Nations in this field. The increased role of the United Nations Centre for Human Rights was also noted with satisfaction.

25. The various measures to be taken against gross violations of basic human rights should include *international penal sanctions*. In this context, the creation of the ad hoc tribunal for various violations of international humanitarian law in the former Yugoslavia was noted. The ultimate objective should be to establish a permanent international judicial body,

with the necessary jurisdiction to deal with such crimes wherever they may occur.

26. Ensuring respect for international humanitarian law, international refugee law and international human rights law also calls for continuing efforts to promote accession to the relevant international legal instruments. In addition, existing arrangements for dissemination and training should be increased and extended so that all target groups concerned are educated to understand and observe humanitarian principles in their respective fields of activity and cultural environment.

27. For the successful implementation of the said three branches of international law, adequate training of the necessary personnel is of capital importance. In this respect, the long-standing experience of the Institute and other competent bodies, in particular the ICRC and UNHCR, should be used more fully. The dissemination of knowledge of these branches of international law is an ongoing task to which adequate attention should also be paid in the future.

28. The media have a major role to play in alerting public opinion to conflict situations. In many cases, however, certain media have departed from the professional ethical standards established for journalists, which should be particularly closely followed in conflict situations. There is therefore a need to ensure the strict observance of these standards.

29. The Institute wishes to express its appreciation to the chairpersons, the participants who introduced the various subjects, the moderators of panels and their assistants, the Coordinator of Panels and the other participants for their valuable contributions to the discussions. Special thanks go to the Organizing Committee of this Round Table, chaired by Dr. Ugo Genesio, Secretary-General of the Institute.

30. The Institute will compile the wealth of material produced by the Round Table and will arrange for its publication, including the moderators' reports, in due course. It will also ensure the follow-up of the Round Table's recommendations, in cooperation with the other institutions concerned.

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GENEVA, NEW YORK, WASHINGTON

## DISSEMINATION OF INTERNATIONAL HUMANITARIAN LAW TO DIPLOMATS AND INTERNATIONAL OFFICIALS

During the first half of 1995, several dissemination seminars on international humanitarian law were organized for diplomats accredited to the United Nations and officials of international organizations.

(1) The *twelfth annual seminar on international humanitarian law for diplomats accredited to the United Nations in New York* was held there from 17 to 19 January. Organized jointly by New York University and the ICRC and attended by some fifty diplomats, the seminar dealt with major aspects of international humanitarian law.

After speeches by Mr Hans Corell, United Nations Deputy Secretary-General and Legal Adviser, and Mr Paul Grossrieder, ICRC Deputy Director of Operations, the subjects were introduced by Mr T. Meron, professor at the New York University and the Graduate Institute of International Studies in Geneva, Mr Horst Fischer from the University of Bochum, Mr Robert K. Goldman from the American University School of Law, Washington, and Mr Roy Lee, Office of Legal Affairs of the United Nations. On behalf of the ICRC, the head of the International Organizations Division and the head and deputy head of the delegation to the United Nations also took part in the discussions.

The work ended with two panels dealing, respectively, with individual responsibility for war crimes and the situation in Rwanda.

(2) The *fourth seminar on international humanitarian law for diplomats accredited to the United Nations Office in Geneva* took place on 21 and 22 March at the Graduate Institute of International Studies in Geneva. Jointly organized by the Institute and the ICRC, the seminar was attended by some 50 diplomats from about 30 Permanent Missions,

together with about 12 people sent by the United Nations and its specialized agencies.

The main purpose of this event was to familiarize diplomats with international humanitarian law and explain the work of the ICRC. It is in line with the seminars which have been organized at New York University for the past twelve years and the one organized in Addis Ababa last year together with the Organization of African Unity.

The seminar was opened by Mrs Brunschwig-Graf, a member of the State Council of the Republic and Canton of Geneva, and Professor Theodor Meron.

The ICRC's Deputy Director for Principles, Law and Relations with the Movement, the Legal Adviser to the Directorate and the head of the Legal Division introduced the following topics: origin and development of international humanitarian law (IHL); the operational activities of the ICRC; and restrictions on the means and methods of war. Law professors from the University of Geneva and from the Graduate Institute of International Studies presented other subjects, notably international human rights law and the relevance of humanitarian law in non-international armed conflicts.

When invited to speak at the end of the seminar, ICRC President Cornelio Sommaruga described the challenges facing the ICRC. In particular, he stressed the need to maintain a humanitarian dimension in the midst of conflicts and ensure coordination amongst the institutions concerned. He also highlighted the importance of spreading knowledge of IHL in other cultures so as to promote non-violence, tolerance and solidarity. Mr Sommaruga went on to mention the financial challenge confronting the ICRC, namely to continue discharging its mandate without relinquishing its independence and autonomy. After reminding participants of the need for universal adherence to humanitarian law instruments, he emphasized that the time had come to revise the law on landmines, in particular anti-personnel mines, and urged that they be totally banned.

The seminar ended with a round table to consider ways of improving the implementation of international humanitarian law, including international tribunals. Mr Sandoz, Director for Principles, Law and Relations with the Movement, acted as moderator; he was assisted by panellists who introduced the following subjects: implementation by States of IHL in accordance with the obligation contained in Article 1 common to the 1949 Geneva Conventions; national measures to implement IHL; the question of a permanent international tribunal; and the dissemination of IHL.

The very lively discussions were concerned more specifically with non-international armed conflicts, the nature of humanitarian law and the ICRC's neutrality.

(3) A *seminar on international humanitarian law* took place on 10 and 11 April 1995 at the American University in Washington, D.C. This was the twelfth seminar of its kind and was organized by Professor Robert K. Goldmann and the American Red Cross, with the assistance of the ICRC; it was particularly geared to the diplomatic community, including diplomats accredited to the Organization of American States (OAS). In addition to representatives of NGOs, officials from the State Department and the Pentagon were invited.

The speakers included Mr Francis Deng, Special Representative of the United Nations Secretary-General on Displaced Persons, Ms Roberta Cohen, Associate Director, Brookings Institute - Refugee Policy Group Project, Professor Tom J. Farer, Legal Adviser to the Pentagon, Professor Reismann of the Yale Law School and previous Chairman of the Inter-American Commission on Human Rights, and Mr Roy Lee, Principal Legal Officer, United Nations, New York. The ICRC was represented by the Deputy Head of the Legal Division, the Deputy Head of the International Organizations Division, the Regional Delegate and the Deputy Head of the New York delegation.

The subjects most intensively discussed during the seminar related to displaced persons, the applicability of IHL to peace-keeping forces and the implementation of IHL.

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## DECLARATION BY THE CZECH REPUBLIC

On 2 May 1995 the Czech Republic made the following declaration regarding its recognition of the competence of the International Fact-Finding Commission.

In accordance with Article 90, paragraph 2 (a), of Protocol I of 1977 additional to the Geneva Conventions of 1949, the Czech Republic declares that it recognizes *ipso facto* and without special agreement, in relation to any other High Contracting Party accepting the same obligation, the competence of the International Fact-Finding Commission to enquire into allegations by such other Party.

The Czech Republic is the **forty-fifth** State to make the declaration regarding the Fact-Finding Commission.

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### **HEALTH AND HUMANITARIAN CONCERNS: PRINCIPLES AND ETHICS \***

The Fundamental Principles of the Red Cross and Red Crescent have inspired and guided the activities of the International Red Cross and Red Crescent Movement since their adoption in 1965 by the 20th International Conference of the Red Cross, and they can be said to constitute the Movement's ideological charter.

However, over the decades, experience has shown that the application of these Fundamental Principles within the Movement can clash with other ideologies, traditions and interests, or run up against violations of international humanitarian law or of human rights.

Professional and voluntary health workers sometimes find themselves confronted with difficult situations in which their assignments do not conform to the principles that they must respect. Doctors, nurses or social workers from National Societies, called on by their governments or government agencies to assist in or to take over the running of health programmes, then face a serious dilemma for which they are ill prepared.

So, what should they do and how should they go about it? To say only that health professionals should act within the framework of the Fundamental Principles is not enough. They must also understand these Principles and how to use them. Until now, no single text had been written that offered guidance on the relationship between the conduct of health professionals, the major humanitarian issues, the Fundamental Principles and codes of professional ethics.

The guidelines laid down by Henry L. Zielinski in his book aim to remedy this shortcoming. The author presents us firstly with information compiled from basic documents and reference works on humanitarian issues as they relate to the tasks of the Movement in the area of health. He then draws on interviews with workers experienced in health issues within the Movement, and finally analyses various questionnaires sent out to the National Societies.

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\* Henryk Leszek Zielinski, *Health and humanitarian concerns — Principles and ethics*, Martinus Nijhoff Publishers, Dordrecht, 1994, 117 pp.

After reminding us of the respective mandates of the Movement's components in the area of health, both during armed conflict and in peacetime, the author presents each one of the Fundamental Principles and explains, with examples, what they mean for health workers.

The importance of professional codes of ethics is also emphasized. Both the Declaration of Geneva, adopted in 1948 by the World Medical Association (WMA) and amended in 1968 and 1983, and the International Code of Medical Ethics, adopted in 1949 by the WMA and amended in 1968 and 1984, are based on the Hippocratic oath devised by the Greek physician who gave it his name (460-370 BC).

The most interesting part of the book is a series of exercises aimed at helping health professionals make sound decisions which respect humanitarian values. Here the author looks at what happens when a country's authorities refuse permission for medical teams to help communities affected by a famine; how a medical team might react when asked by a government to force-feed hunger strikers; and whether health workers should intervene in the private life of a family where children are being abused.

Other examples are based on cases of torture, the sale of organs, AIDS, etc. In each case Dr Zielinski poses apt questions and gives the basis of a reply referring back to the relevant documents mentioned earlier.

This useful book is supplemented with numerous annexes, which health workers might find interesting, of official texts relating to the Movement, the United Nations and various medical organizations.

*Jacques Meurant*

The *International Review of the Red Cross* is the official publication of the International Committee of the Red Cross. It was first published in 1869 under the title "Bulletin international des Sociétés de secours aux militaires blessés", and then "Bulletin international des Sociétés de la Croix-Rouge".

The *International Review of the Red Cross* is a forum for reflection and comment and serves as a reference work on the mission and guiding principles of the International Red Cross and Red Crescent Movement. It is also a specialized journal in the field of international humanitarian law and other aspects of humanitarian endeavour.

As a chronicle of the international activities of the Movement and a record of events, the *International Review of the Red Cross* is a constant source of information and maintains a link between the components of the International Red Cross and Red Crescent Movement.

The *International Review of the Red Cross* is published every two months, in five main editions:

French: REVUE INTERNATIONALE DE LA CROIX-ROUGE (since October 1869)

English: INTERNATIONAL REVIEW OF THE RED CROSS (since April 1961)

Spanish: REVISTA INTERNACIONAL DE LA CRUZ ROJA (since January 1976)

Arabic: المجلة الدولية للصليب الأحمر (since May-June 1988)

Russian: МЕЖДУНАРОДНЫЙ ЖУРНАЛ КРАСНОГО КРЕСТА (since November-December 1994)

Selected articles from the main editions have also been published in German under the title *Auszüge* since January 1950.

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The *International Committee of the Red Cross (ICRC)* and the *International Federation of Red Cross and Red Crescent Societies*, together with the *National Red Cross and Red Crescent Societies*, form the International Red Cross and Red Crescent Movement.

The ICRC, which gave rise to the Movement, is an independent humanitarian institution. As a neutral intermediary in the event of armed conflict or unrest it endeavours, on its own initiative or on the basis of the Geneva Conventions, to bring protection and assistance to the victims of international and non-international armed conflict and internal disturbances and tension.

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# INTERNATIONAL REVIEW

*Special*

## DISSEMINATION AND PREVENTIVE ACTION

Dissemination of the humanitarian rules  
for the purpose of prevention

Action before, during and after the crisis:  
The experience of the ICRC in retrospect

*Dissemination in academic circles*  
*The Jean Pictet Competition*

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law as reflected by the  
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